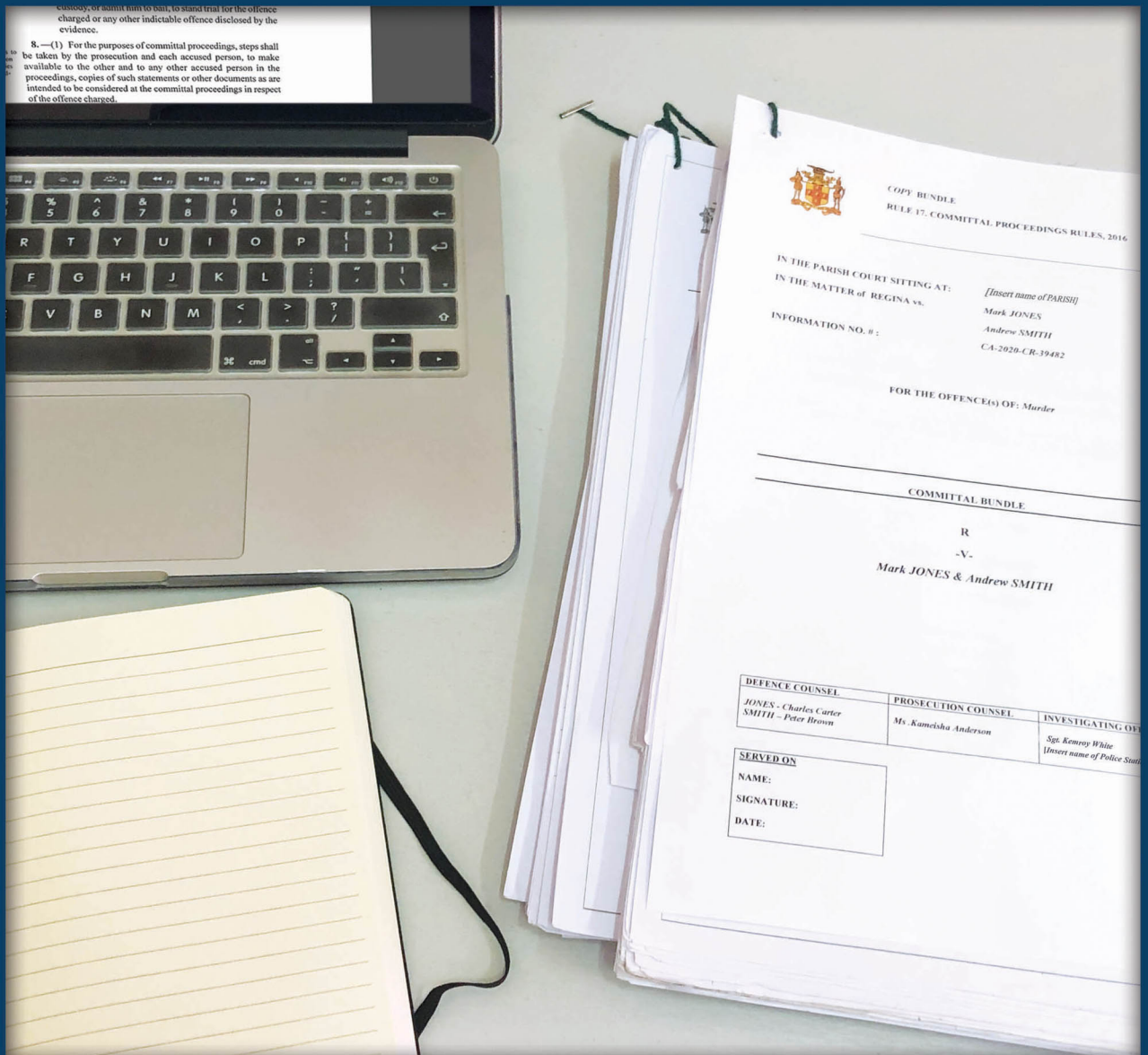




# GUIDE TO COMMITTAL PROCEEDINGS





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Foreword by  
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# Foreword

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I have often observed that the majority of persons who come before the courts of Jamaica do so in the Parish Courts. This means that the main burden of dispensing justice in Jamaica is borne by these courts. The steady improvement in case clearance rates and other measures of court efficiency evident in the Parish Courts, is a welcome trend in which we continue to invest through various strategic initiatives.

The committal proceedings process, which on 1 January 2016 replaced “old style” preliminary inquiries, significantly reduces the time Parish Courts spend to determine whether there is *prima facie* evidence of serious offences beyond the jurisdiction of the Parish Courts that require cases to be committed for trial in the circuit courts. This new, largely paper-based process has a number of benefits including:

- (a) it is much faster than preliminary inquiries;
- (b) in most cases witnesses are not required to provide depositions and therefore do not have to testify in the same matter twice — in the Parish Court and then again at the trial in the circuit court;
- (c) the Parish Courts can use the time saved to speed the disposition of matters within their jurisdiction.

It is these benefits among others, which spurred discussions on abolishing preliminary inquiries in favour of committal proceedings from at least the 1970s.

The transition process has however not been without its teething pains. The committal proceedings process is highly time sensitive, whereas the preliminary inquiry process it replaced was not. Conceptually the process is now adversarial and not inquisitorial. The Committal Proceedings Act, Committal Proceedings Rules, as well as the Practice and Standard Directions issued, have left gaps in several areas of practice and procedure in the committal proceedings process. Consequently, across the Parish Courts a number of differences have developed in the interpretations of some sections and paragraphs of the Act and Rules, the forms utilised, and general approaches to aspects of the new process.

This Guide provides the user with assistance in the interpretation of some issues that have proved controversial, while highlighting areas that ideally can benefit from further legislative action or the issuance of additional Standard Directions. It provides a step-by-step route through the committal proceedings process and includes standard forms that should be used. Helpfully, the electronic version of the Guide features convenient hyperlinks and fillable forms.

The Guide should therefore result in general standardisation of the committal proceedings regime across the island ensuring that the look, feel and quality of the committal bundles produced in all Parish Courts, are of a uniformly high standard.

I record my thanks and commendation for the commitment, time and hard work of the Subcommittee of the Criminal Case Management Steering Committee which has produced this Guide. It is an important, practical and very useful addition to our indigenous legal literature. The subcommittee members are David Fraser J (Chair), Leighton Pusey J, Crescencia Brown-Beckford J, Vinette Graham-Allen J, Stephane Jackson-Haisley J, HH Tracey-Ann Johnson, HH Sanchia Burrell, HH Luciana Ramsay-Jackson, HH Natalie Ebanks-Miller, HH Larona Montague-Williams and Mr Francis Burak, Technical Adviser, Justice, Pan American Development Foundation, Jamaica.

Special appreciation is extended to Mr Burak through whose initiative the Embassy of the United States of America, to which we also express our gratitude, funded the publication and launch of this Guide.

This is another publication under the aegis of the Judicial Education Institute of Jamaica (JEIJ) working in partnership with Ian Randle Publishers, to provide a practical tool to enhance the practice in our courts. My thanks to them both and commendation of the development work of the JEIJ.

I commend the Guide to Judges of the Parish Courts, practitioners and members of the public, who wish to get clear insight into the committal proceedings process. While this Guide does not take the place of judicial decisions and is not intended to undermine judicial independence, nonetheless there ought not to be departure from it without exceptionally good reasons. Personal preferences do not amount to exceptionally good reasons.

Finally, any member of the legal profession or anyone who identifies any error in this Guide or has any suggestion for improvement, please bring it to the attention of the Committee.

**Bryan P. St. G. Sykes OJ, CD**  
Chief Justice

# Preface

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At the outset of its Preliminary Report issued in May 2007, the Jamaican Justice System Reform Task Force (the Task Force), a broad-based grouping comprising representatives from various sectors of the justice system and civil society, listed what it perceived to be the twelve main problems besetting the system. Prominent among them were delays, lack of respect for individuals who come in contact with the justice system, complex and in some cases archaic procedures, lack of cost-effectiveness and outdated and inefficient practices and procedures. And, prominent among the specific issues identified in this last-mentioned category, was the continued use of preliminary inquiries.

The Task Force noted:<sup>1</sup>

Preliminary inquiries contribute substantially to overall court delay. They are very time-consuming as the Resident Magistrate must record a 'deposition' from each witness at the preliminary inquiry, read it back to the witness, and have the witness sign it. Witnesses are inconvenienced by having to attend court on several occasions. A consensus is emerging that something must be done to reduce the time taken up by preliminary inquiries. At the same time, it is important to acknowledge resistance to change and in particular abolition of preliminary inquiries. Legislation to reform the preliminary inquiry has been initiated several times in the past but has met resistance leading to abandoning of reform efforts. The Task Force then went on to make the case for abolition of preliminary inquiries, querying whether they might not be replaced by a more cost-effective charge screening process fulfilling essentially the same functions. The overall context of the discussion was provided by the consensus among stakeholders that a criminal case management system should be implemented, that is, a system aimed at reducing delays by focusing on early resolution of cases through more effective charge-screening and disclosure procedures.

Against this background, the abolition of preliminary inquiries became one of the Task Force's key proposals:<sup>2</sup>

The Task Force proposes abolition of preliminary inquiries be phased in as criminal case flow management is implemented and once the ODPP<sup>3</sup> has been modernised. As interim measures, the Task Force proposes that provision be made for (1) the waiving of the preliminary inquiry with the consent of both accused and prosecutor and (2) a short form preliminary inquiry that combines 'paper' and viva-voce evidence.

- 
1. Jamaica Justice System Task Force Preliminary Report, May 2007, page 195 (paragraph 490).
  2. Proposal 7.17, page 196.
  3. Office of the Director of Public Prosecutions.

Within two years of the Task Force's Preliminary Report, the introduction of the criminal case management system which it foreshadowed would gain early impetus through the formation of the Criminal Case Management Steering Committee (CCMSC). The remit of the CCMSC, which enjoyed – and continues to enjoy – the great advantage of the active participation of the Chief Justice, was twofold. First, to take such steps as were within its power to promote more efficient and timely outcomes in criminal justice, by the streamlining of processes and the sensitisation of stakeholders at all levels to the important roles which their own contributions play in achieving that objective. And second, to make recommendations for such legislative changes as it thought necessary to facilitate the overall objective of modernising the criminal justice system. The abolition of preliminary enquiries was a natural fit in both respects.

The enactment of the Committal Proceedings Act, 2013 (the CPA) may therefore be seen as a logical outgrowth of this process, representing as it did the product of a broad consensus as regards what was required to move the system forward. Through the vagaries of the legislative process, the CPA was not brought into force until 1 January 2016. But, as it turned out, despite the further delay, this may not have been such a bad thing, it allowing as it did for the preparation of the Committal Proceedings Rules, 2016 (the CPA Rules), which also came into force that same day.

Since that time, the new system has encountered some of the teething problems which culture change in any sphere of law or life will inevitably generate. As with all new legislation, no matter how long it has been in coming, many questions have arisen from a lack of complete familiarity on all sides with the details of the requirements of the new process, sometimes eroding the very element of predictability which any legal system should aim to provide.

It is in recognition of these factors that this Guide to Committal Proceedings sets out "to encourage a consistent approach, in accordance with the relevant law, towards the preparation and processing of committable offences". Prepared by the Committal Proceedings subcommittee of the CCMSC, the Guide is an outstanding example of what can be achieved by voluntary effort aimed at enhancing the processes to which all judicial officers are committed. It therefore gives me very great pleasure to recognise and laud the achievement of Mr Justice David Fraser, Chair of the subcommittee, and his team, in bringing this project to fruition. All sitting judicial officers, they have willingly gone well beyond the call of duty and we are greatly in their debt.

In similar vein, I must single out for special mention – and thanks – Mr Francis Burak, the only non-judicial member of the subcommittee, for the great fund of technical skill, experience and commitment which he has brought to this project. Mr Burak has played a significant

advisory role in virtually all aspects of the work of the CCMSC since its inception. On this occasion, he has been associated with the team in his capacity as Technical Adviser, Justice, of the Pan American Development Foundation, under the auspices of which the production of the Guide has been funded by the Embassy of the United States of America. We are very grateful to them as well.

The publication of the Guide is but a part of the wider and ongoing project of criminal justice reform. Much has been achieved in the nearly 13 years since the publication of the Preliminary Report, hardly least of all the formation of the CCMSC itself. The production by the DPP of a prosecution Disclosure Protocol, and by another subcommittee of the CCMSC of Sentencing Guidelines for use by judges of the Supreme Court and the Parish Courts, as well as legislative changes to allow for agreed evidence in criminal cases and to encourage guilty pleas, must also rank high among them. But the criminal justice reform agenda, an ever-evolving and dynamic plan, must necessarily remain incomplete. Still ahead in the not too distant future must surely be the promulgation of a detailed set of criminal procedure rules, complementing the now fully mature Civil Procedure Rules; and, who knows, perhaps even a comprehensive code of the criminal law. Looked at this way, I would like to think of the publication of this excellent Guide as a milestone, not an end.

**C. Dennis Morrison, OJ, CD**

President of the Court of Appeal



# Guide To Committal Proceedings

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## 1. **PURPOSE OF THE GUIDE**

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- 1.1 This Guide is intended for use as a reference for judicial officers, attorneys-at-law and other court users. The purpose of the Guide is to encourage a consistent approach, in accordance with the relevant law, towards the preparation and processing of committable offences. Users of this Guide are reminded that its contents cannot supersede any relevant statute, rules of court, practice or standard direction, which will all take precedence if there is divergence between what they provide and the contents of the Guide.

## 2. **WHAT ARE COMMITTAL PROCEEDINGS?**

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- 2.1 Committal proceedings are held pursuant to an Order made by a Judge of the Parish Court. They are held in relation to offences triable in the Criminal Division<sup>1</sup> of the Supreme Court for which a Judge of the Parish Court (PCJ) sitting as an Examining Justice (EJ) exercising Petty Sessions jurisdiction, will examine evidence tendered (whether for the prosecution or defence) and assess whether or not there is prima facie proof of the charge(s) against an accused person.<sup>2</sup>
- 2.2 If the EJ is satisfied that the evidence against the accused is sufficient to establish prima facie proof of the charges(s), the accused person is committed to the Circuit Court for trial. However, if the EJ is not satisfied that the evidence against the accused is sufficient to establish prima facie proof of the charges(s), the accused person shall be discharged.

## 3. **LEGISLATION, RULES OF COURT, PRACTICE AND STANDARD DIRECTIONS**

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- 3.1 The following instruments are currently in force:
- (i) [Committal Proceedings Act, 2013](#) (“CPA”) (in force as at 1<sup>st</sup> January 2016).
  - (ii) [Committal Proceedings Rules, 2016](#) (“CPA Rules”) (in force as at 1<sup>st</sup> January 2016, reissued in Gazette 17<sup>th</sup> November 2016).

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1. Constituted as a Circuit Court.

2. In accordance with s.3 of the Committal Proceedings Act and s.272 of the Judicature (Parish Courts) Act.

- (iii) [Practice Direction No. 1 of 2017](#) (issued 11<sup>th</sup> January 2017).
- (iv) [Standard Directions No. 1 of 2018](#) (issued 16<sup>th</sup> July 2018) (Applicable only to cases emanating from the Parish Court for the Corporate Area (Criminal Division)).<sup>3</sup>
- (v) [Standard Directions No. 1 of 2019](#) (issued 29<sup>th</sup> March 2019) (Applicable only to cases emanating from the Parish Court for the Corporate Area (Criminal Division)).<sup>4</sup>

#### **4. SUMMARY OF THE PROCESS**

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- 4.1 Whilst the CPA makes provision for the legal basis of the committal proceedings process and its core requirements, the CPA Rules make detailed provision for the procedure and process.
- 4.2 There is no obligation in the CPA or CPA Rules that the pre-trial case management and committal hearing is conducted by the same Judge of the Parish Court.
- 4.3 The process under the CPA Rules reduces and regulates the use of mention hearings. Consequently, there is an expectation that parties will more frequently resolve issues concerned with disclosure and the preparation of the case out of court; to enable this to take place it is crucial that there are available channels of communication between parties.
  - 4.3.1 It is advisable for parties to a case, and the court, to ensure that accurate and current contact information (for both the prosecution and defence), including email addresses and mobile phone numbers are obtained from the outset of the case, and reviewed throughout the lifetime of the case.

### **FIRST APPEARANCE**

- PCJ must ensure there is a written Preliminary Report or Oral Summary of the required information before proceeding ([r.9](#) and [r.6](#)).
- PCJ determines jurisdiction ([r.11](#)).
- Timetable is set – to include dates for service of bundles, committal hearing and where applicable mention hearings ([r.19](#), [r.20](#), [r.22](#)).

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3. As far as possible this should also guide the practice in respect of cases emanating from the Kingston and Saint Andrew Family Court.

4. Ibid.



## MENTION HEARINGS

- It is expected that the time standards outlined in the rules will be observed, and court hearings will only be held when absolutely necessary and required by the law. Therefore mention hearings are permitted only in specific circumstances (r.21(2) and r.22):
  - (i) Prosecution on notice – due to expected inability to comply with timetabled date for service of bundles (r.21(2)(a)).
  - (ii) Prosecution failure to comply with timetabled date for service of bundles (r.21(2)(b)).
  - (iii) Application for oral testimony (r.21(2)(c)).
  - (iv) To further the overriding objective or in the interests of justice and with a view to ensuring compliance with rules on timetabling and conduct of mention hearings (r.22).
- Following a mention hearing for expected or current failure to comply with the timetable, the PCJ has 3 options (r.21(4)):
  - (i) Set a new timetable (r.21(4)(a)).
  - (ii) Enforce compliance, as closely as possible with the current timetable (r.21(4)(b)).
  - (iii) Apply sanctions (r.21(4)(c)/r.23).
- The scheduling of a mention hearing pursuant to rule 22 of the CPA Rules must take place at the same time as the PCJ makes the decision as to jurisdiction.

## COMMENCEMENT OF COMMITTAL HEARING

- The prosecution sets out charges upon which they seek the committal proceedings order (r.25(1)(a)/r.26(1)(a)).
- PCJ makes the order that committal proceedings are held (s.3(1)).
- Prosecution indicates the statements they intend to rely upon for the purposes of Committal Proceedings.
- EJ confirms section 6 compliance of those statements in open court (r.25(2)).
- Where statements are not compliant with s.6 CPA the statement cannot be admitted in its current form (s.6/r.25(6)). In such circumstances the CPA Rules provide procedural options:
  - (i) An adjournment for the formalities to be rectified (r.25(7)(a)).
  - (ii) Allowing the witness to give oral evidence (r.25(7)(b)).
  - (iii) Choosing to continue without the evidence of the witness (r.25(7)(c)).

## EVIDENCE AT COMMITTAL

- The evidence in the committal bundle may be tendered into evidence, 'on paper' in one of three ways (r.25) –
  - (i) If there is no agreement to the contrary, the prosecution reads out the contents of all statements being relied upon (r.25(1)(b)); and /or
  - (ii) The prosecution having agreed with defence, summarises the contents of each or specific statement(s) (r.25(1)(b)); and /or
  - (iii) Where the accused is represented and all parties agree – the EJ reads some or all of the documents privately, and confirms in open court which statements and exhibits have been read (r.25(1)(c)).
- The EJ signs and dates each statement and documentary exhibit tendered pursuant to section 6 (s.9/r.25(3)).
- If a successful application is made for oral evidence or the court orders a witness to attend to give oral evidence, the evidence is taken in deposition form and the rules concerning oral testimony are observed (r.26).
- If the prosecution, defence and EJ agree, and the conditions at r.26(1)(d) are satisfied, the witness statement of a witness required to give oral testimony can stand as the witness' evidence in chief.
- Where oral evidence is given, a verbatim record is kept by the EJ (r.26.(2)) and the 'read back' and verification procedure is carried out (r.26(3)–(6)).
- The CPA Rules provide general guidance for circumstances where the evidence of a witness is recorded by means of an electronic recording device (r.26(8)–(10)). It is anticipated that detailed guidance outlining the process to be followed from the preparation of the recording through to transcription and transmission will be provided by way of Practice or Standard Directions.
- The prosecution closes its case.
- Submissions in law by the defence, if any, and the prosecution's response. If unrepresented the accused person is entitled to submit that there is no case for him to answer (s.3(3)/r.25(9)/r.26(18)).

## CONCLUSION OF COMMITTAL

- The EJ rules whether there is a prima facie case or not.
- Where no prima facie case has been made out (r.25(10) and r.26(20)) –
  - (i) the announcement should be in open court and brief reasons for the decision shall be given;
  - (ii) the EJ should cause to be endorsed and sign on the Number 1 information an order that no prima facie case has been made out for the particular offence;
  - (iii) if there are multiple charges and/or accused persons it should be clearly indicated which offence(s) is/are made out and which accused has been committed and which has not;
  - (iv) the accused is discharged and committal proceedings are at an end. (In cases of murder, manslaughter, infanticide or an offence under s.30(1) of the Road Traffic Act – if the Judge of the Parish Court is satisfied that no inquest has been held he/should consider assuming the jurisdiction of the Coroner pursuant to s.13A of the Coroner's Act.)
- If there are charges made out which fall within the jurisdiction of the Parish Court, the matter reverts to the mainstream mention or trial list preferably before another Judge (for procedure see s.276 of the Judicature (Parish Courts) Act).
- If a prima facie case has been made out, the EJ calls upon the accused, enquiring which of the four options available to him he will choose (s.5(1), r.25(10), r.26(21));
  - (i) If the accused remains silent, go straight to committal (see below).
  - (ii) If the accused chooses to make an oral statement from either the dock (unsworn) or the witness box (evidential), he must be given the requisite caution by the EJ, in the words set out in the first schedule of the CPA (s.5(2) and First Schedule).
  - (iii) Any oral statement made by the accused shall be recorded, read-over, signed, retained and transmitted in accordance with s.5(3).
  - (iv) If the accused chooses to tender into evidence a written statement to stand as his evidence, it is adduced in keeping with the usual formalities and the EJ either reads privately upon agreement or the statement is read in open court. This statement is also tendered and admitted into evidence as an exhibit.
  - (v) Where the accused has submitted a written or oral statement the defence is invited to make further submissions at the end of its case.
  - (vi) If evidence is given by the defence the EJ will invite further submissions from the parties and revisit the assessment as to whether there is prima facie proof of the charge (r.25(14), r.26(24)).

## CONCLUSION OF COMMITTAL (contd)

- **Where the EJ commits the accused to stand trial e.g.:** *“Mr. John Brown, having examined the evidence submitted, I am satisfied that there is sufficient evidence to establish prima facie proof of the charge[s] of [insert offences], I hereby commit you to stand trial in the [insert name of court] Circuit Court, holden at [insert address of court], in the parish of [insert parish] on the [insert date], at [insert time].”*
- **Where no prima facie case is made out e.g.:** *“Mr. John Brown, having examined the evidence submitted I am not satisfied that there is sufficient evidence to establish prima facie proof of the charge[s] of [insert offences]. The brief reasons for this decision are as follows [insert brief summary of the reason for the decision]. Accordingly you are discharged.”*
- Witness Orders are made (s.12).
- Bail is dealt with. If the accused is to be committed on bail, bail bonds have to be entered into for him to appear at the circuit court. It is not correct for the bail of the accused to be “extended” on the same bonds if he was on bail prior to committal.
- Annex A (standard directions) and Annex B (certificate of committal) are completed and provided to the parties.

## 5. ORDER FOR COMMITTAL HEARING

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- 5.1 At the commencement of the committal hearing the Prosecutor will make an oral application pursuant to s.3 of the CPA for an order:

*“that committal proceedings be held with a view to committal of [insert name of accused] to the Circuit Court for trial.”<sup>5</sup>*

- 5.2 The PCJ will announce that the order is made and affix the requisite stamp to the Number 1 information stating:

*“Let Committal Proceedings be held into the within named charge with a view to committing the accused to stand and take his trial at the current/forthcoming ..... session of the..... Circuit Court, if a prima facie case is made out against him.*

*Signed:.....*

*Dated: The .....day of .....20....”*

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5. The legislative requirement to make an order requiring that committal proceedings be held, with a view to a committal to the Circuit Court, is also found at s.272 of the JPCA.

- 5.3 Where there is more than one charge for which the application is made for committal proceedings to be held, in making the respective Orders the PCJ should ensure that each Number 1 Information is addressed. Thus making it clear specifically for which charges committal is sought.

## **6. ADMISSION OF EXHIBITS**

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- 6.1 If a written statement is admitted into evidence pursuant to [s.6](#) of the CPA, admission of any exhibits purporting to have been produced by the statement is regulated by the Act. As a starting point, the exhibit must have been properly referred to as an exhibit and identified within the written statement.<sup>6</sup> Additionally, one of the following sets of requirements must be met:
- (i) The original exhibit is produced in court, it is marked as having been produced, and the accused has had an opportunity to inspect it;<sup>7</sup>
  - (ii) A **copy** of the exhibit is provided and a [s.6\(5\)\(b\)](#) notice as to the location of exhibit is provided;<sup>8</sup>
  - (iii) Information is given to enable inspection and obtaining of a copy, and a [s.6\(5\)\(b\)](#) notice as to the location of exhibit is provided;<sup>9</sup>
  - (iv) If it is not convenient to produce the exhibit at court or make a copy, the actual witness statement shall include information as to where the exhibit is available for inspection<sup>10</sup> and a notice as to the location of exhibit is provided.<sup>11</sup>
- 6.2 Each documentary exhibit tendered as evidence pursuant to [s.6](#) of the CPA, must be signed by the EJ presiding over the proceedings.<sup>12</sup>
- 6.3 [Section 6\(5\)\(b\)](#) of the CPA stipulates that where it is not convenient to produce at court any exhibits tendered under [s.6](#), the parties must be served with notice of the location of the exhibit.
- 6.4 If the requirements at [s.6](#) of the CPA are not met, exhibits must be tendered into evidence through production in court by a live witness giving oral evidence in the usual way.

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6. CPA s.6(5)(a).

7. CPA s.6(5)(a).

8. CPA s.6(3)(f)(i) and s.6(5)(b).

9. CPA s.6(3)(f)(ii) and s.6(5)(b).

10. CPA s.6(3)(g).

11. CPA s.6(5)(b).

12. CPA s.9.

## **7. SIGNING OF DOCUMENTS TENDERED**

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- 7.1 [Section 9](#) of the CPA makes it clear that the EJ must ‘sign’ all witness statements and documentary exhibits tendered to the court pursuant to [section 6](#).
- 7.2 Where possible, signatures should be appended to the statements and documentary exhibits, on the original documents. The EJ should place his/her signature on the rear of the document, in the lower left margin, in a clear unobstructed area on the document. Where such positioning is not practicable, the EJ should seek to identify a clear unobstructed area on the document.
- 7.3 If it is not possible to sign the document without obstructing the content of the exhibit signatures should be appended to a label that forms part of the original witness statement or documentary exhibit.
- 7.4 The format of the signature should be constructed as follows The ‘signature block’ should be constructed as follows:

*‘CPAC’<sup>13</sup>*

*‘[signature]’*

*‘Judge of the Parish Court’*

*‘[date]’*



## **8. TIMETABLING AND SETTING DATES**

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- 8.1 The formulation of the CPA Rules does not permit the routine management of committal proceedings cases by way of multiple mention hearings scheduled for the purpose of tracking the completeness of the Prosecution case file. The CPA Rules stipulate requirements to ‘timetable’ the preparation and scheduling of committal proceedings cases.<sup>14</sup> These provisions are inserted to encourage a consistent approach towards a fair and just process and to support the overriding objective of the rules<sup>15</sup> and the intention of the primary legislation. Whilst the handling of each case will be determined on its own facts and individual circumstances, all parties should seek to comply with the ‘timetabling’ guidelines and ‘time standards’, contained within the rules.

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13. CPAC means Committal Proceedings Act Compliant.

14. See in particular rules 20–24.

15. For the overriding objective see rule 3.

## 9. THE INQUISITORIAL NATURE OF COMMITTAL PROCEEDINGS

- 9.1 In the 2016 judicial review case of *Hines*<sup>16</sup> the Full Court expressed the view that s.64 of the Judicature (Parish Courts) Act ('JPCA') is indicative of the inquisitorial nature of committal proceedings – in which the Judge of the Parish Court is to play the role of a reasonably active but balanced and impartial seeker of the truth.<sup>17</sup> This being said, the Court did acknowledge that it could be argued that committal proceedings could be described as adversarial as each party has the right to actively participate in the proceedings.<sup>18</sup>
- 9.2 The judgment in the *Hines* case highlighted, what in the opinion of the Full Court, was a conflict between the CPA Rules and the JPCA; notably, that [rules 14](#) and [16\(2\)](#) of the CPA Rules are in conflict with s.64 of the JPCA.<sup>19</sup>

### The relevant sections of the Rules and Act are:

- **CPA Rule 14**

"Committal proceedings shall be adversarial in nature."

- **CPA Rule 16(2)**

"At no time shall any Judge of the Parish Court or the examining Justice inspect a file for the purpose of indicating whether or not the file is complete, nor shall he decide or direct whether a file is complete."

- **JPCA section 64**

"Every Judge of the Parish Court shall, within his parish or parishes, conduct all committal proceedings in respect of charges or informations for indictable offences triable in the Circuit Court.

In holding any such examination, it shall be the duty of the Judge of the Parish Court to see that all proper evidence is brought forward and enquiries made, and with this view from time to time, in any case that may be brought before him, to give such instructions and directions to the Clerk of Courts, and to the local Superintendent or other officer of Constabulary entrusted with the conduct of such case, as may seem to him necessary."

16. *Independent Commission of Investigations and Errol Chatoo (Director of complaints (Western Region) INDECOM)) v Natalie Hart Hines (Parish Judge Saint James Parish Court)* [2018] JMFC Full.

17. *Ibid.* at para 207.

18. *Ibid.*

19. *Ibid.* at para 211.

- 9.3 What is clear from the conclusions drawn in the judgment is the Court's interpretation of s.64 of the JPCA; that a Judge of the Parish Court has a duty to ensure that all available and admissible evidence is included in the *committal bundle*.<sup>20</sup>
- 9.4 It follows that the exercise of the PCJ's s.64 duty may manifest through the making of enquiries as to the nature and availability of evidence in any given case and giving instructions and directions to the Clerk of Courts and law enforcement representatives pursuant to s.64 of the JPCA. With regard to the conflict between the JPCA and CPA Rules (as highlighted in the *Hines* case), at the time of publishing this Guide representations have been made to the Rules Committee of the Parish Courts and the Ministry of Justice with regard to any necessary changes to primary and/or secondary legislation resulting from the findings of the judgment.

## 10. COMPLETENESS OF THE FILE

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- 10.1 There will be occasions whereby even after a PCJ has fulfilled his duty pursuant to section 64 of the JPCA the prosecution file will *not* be complete<sup>21</sup> at the point of commencing committal proceedings. For such cases a PCJ will need to consider whether it is in the interests of justice to permit or require committal proceedings to take place where the prosecution has not completed their file and material remains outstanding (see [rule 13\(2\)](#) of the CPA Rules).
- 10.2 [Rule 13\(3\)](#) of the CPA Rules provides criteria that the court must take into account when exercising this discretion, and [rules 13\(3\)–\(6\)](#) of the CPA Rules state further guidance on marshalling this process.
- 10.3 It is also advisable that any decision made pursuant to CPA [s.13\(2\)](#) should consider the following:
- (i) **Section 7 of the CPA:** Sets out the core function of the Judge of the Parish Court in relation to committal proceedings. It underlines the position that committal proceedings are a process whereby a PCJ sitting as an EJ exercising Petty Sessions jurisdiction, will examine evidence tendered (whether for the prosecution or defence) and assess whether or not there is prima facie proof of the charge(s) against an accused person, thus enabling committal to the Circuit Court for

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20. Ibid. at para 325.

21. The commonly accepted definition of the file being complete is that 'all material required for the trial to proceed is present on the Prosecution case file'.



trial. If the EJ is not satisfied that the evidence against the accused is sufficient to establish prima facie proof of the charge(s), the accused person is discharged.

- (ii) **Rule 3 of the CPA Rules:** Contains the *overriding objective* of the rules. There is an acknowledgment that cases being transferred to the court of trial should not be subjected to substantial delay after committal (r.3(6)) and that it is an important element in achieving the overriding objective that a case file should be substantially complete (r.3(7)) by the time of committal proceedings.<sup>22</sup>
- (iii) **Rule 13(1) of the CPA Rules:** Reinforces the limited purpose of committal proceedings and acknowledges that it is not necessary for the prosecution to be 'trial ready' at the point of committal.

## 11. 'TRANSITIONAL' CASES

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- 11.1 **What are transitional cases and existing charges?** – The CPA specifically provides how 'transitional' cases should be handled. These are cases that concern 'existing charges' which are charges laid prior to the commencement date of the CPA (1<sup>st</sup> January 2016).<sup>23</sup>
- 11.2 **Which regime applies for transitional cases?** – If a preliminary enquiry commenced prior to 1<sup>st</sup> January 2016 is incomplete, the accused person has the right to elect to have proceedings conducted by way of committal proceedings instead.<sup>24</sup>
- 11.3 **What are the special rules for s.6 compliance?** – Statements made prior to the commencement date and tendered for committal proceedings concerning an 'existing charge' are said to be compliant with s.6 if:
  - (i) The 'read-over' procedure at CPA s.21(4)(a) is complied with; or
  - (ii) The witness is absent in s.31D Evidence Act circumstances and their statement would have been admissible in relation to a preliminary examination of the offence conducted prior to the commencement date.<sup>25</sup>

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22. Consequently, all parties should approach the committal proceedings process in line with the need to promote file readiness and reduce delay.

23. CPA s. 21(1).

24. CPA s.21(2)–(3).

25. For child witnesses see CPA s.6(3)(a-c). For persons who are unable to read their witness statement see CPA s.6(3)(d).

## 12. COMPETENCE OF CHILD WITNESSES

- 12.1 The provisions in the CPA concerning the competence of child witnesses<sup>26</sup> (persons under the age of 14 years) have been superseded by the amendments made to the Evidence Act by virtue of the Evidence (Amendment) Act 2015. The procedures contained in sections 31N, 31O and 31P of the Evidence Act apply to child witnesses in committal proceedings.<sup>27</sup>
- 12.2 The application of these sections may be summarised as follows:

COMPONENT	SECTIONS	SUMMARY
Test for competence	31N(2)(a–b)	<b>Appears to the court that:</b> (i) child is possessed of sufficient intelligence to justify the reception of the evidence; and (ii) child understands the duty of speaking the truth.
Standard of proof	31O(1)	Any question of competence shall be determined by the court on a balance of probabilities.
Method of determination	31O(4), 31O(6)	Court may question the child and may review 3 <sup>rd</sup> party ‘assessor’ evidence.
Questioning child for determination	31O(4)(a)	Questioning conducted in the presence of the parties to the proceedings and any ‘accompanying person’ (social worker or other person appointed by the court).
	31O(2), 31O(4)(b)	Questioning can take place with the benefit of special measures where the court has made or proposes to make such an order in respect of the child or where the court deems it necessary for the purpose of the proceedings under s.31O(1).

26. See CPA s.6(3)(b)–(d) and s.6(4).

27. The relevant sections of the Evidence Act (as amended) make it clear that the new provisions apply to ‘criminal proceedings’. By virtue of the definition of ‘criminal proceedings’ contained in section 1A(d) of the Evidence Act (as amended) the new provisions apply to committal proceedings.

COMPONENT	SECTIONS	SUMMARY
Reviewing 3 <sup>rd</sup> party 'assessor' evidence	31O(6)	The court may review evidence from: <ul style="list-style-type: none"> <li>(i) a child psychiatrist</li> <li>(ii) child psychologist</li> <li>(iii) probation officer,</li> <li>(iv) any other person who the court considers to be qualified to make an assessment of the child and who is not a party to the proceedings.</li> </ul>
No administering of Oath	31P(1-2)	Where pursuant to the provisions of section 31N, a child is competent to give evidence, the evidence of the child shall be given <b>without</b> administering an oath.  The evidence given by the child shall be treated, as if that evidence had been given on oath.

12.3 **Statements made prior to the commencement date, by a person under the age of 14 years, tendered under s.21 of the CPA in 'transitional cases' –** Admissibility of these statements falls under the transitional provisions at s.21 of the CPA (see paragraph 11 above).

**13. SECTION 6 STATEMENTS OF PERSONS WITH PHYSICAL DISORDER, PHYSICAL DISABILITY, OR MENTAL DISORDER**

13.1 **Section 6 statements where the maker has impaired capacity to communicate:** Ordinarily the requirements of s.6 require that, at the point of taking a statement, the recorder of a statement is to 'read-over' the contents of the statement to the maker. However, if the maker is suffering from a physical disability, physical disorder or mental disorder<sup>28</sup> which renders it impracticable for the maker to be communicated with in the absence of special assistance or equipment, the statement may be communicated in any other effective manner.<sup>29</sup>

28. Mental disorders recognised for the purposes of s.6(2)(a) of the CPA are those within the meaning of the Mental Health Act.

29. CPA s.6(2)(a).

- 13.2 **Section 6 statements where the maker is unable to sign or make a mark:** If a statement is made by a person who is suffering from a physical disability or physical disorder that renders him/her unable to sign or otherwise make a mark, but capable of otherwise affirming or negating any statement recorded, such statement should be read to the person or otherwise effectively communicated to him/her and shall be accompanied by a declaration by the recorder that the statement has been made with the affirmation of the person, indicating the manner of such affirmation.<sup>30</sup>

## **14. WITNESS ORDERS AND WITNESS CARE**

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- 14.1 **Witness Orders:** In accordance with s.12 of the CPA the EJ shall, in respect of each witness (other than the accused) who has given evidence in committal proceedings, make a witness order requiring the witness to attend and give evidence before the Circuit Court.
- 14.1.1 The witness order should be made for the date of the first hearing in the Circuit Court.
- 14.2 **Witness Care:** Under the committal proceedings process there is a reduced necessity for witnesses to attend court prior to the first appearance at the Circuit Court. Consequently, for many witnesses their first point of contact with the court process will be attendance at the Circuit Court pursuant to a section 12 order made by the Parish Court. The interests of justice will be best served if the Court and criminal justice partners establish robust policies and procedures to implement minimum standards of care for witnesses, these may include:
- (i) Fair, respectful, sensitive and professional treatment.
  - (ii) The provision of information about the court and court process.
  - (iii) Being kept adequately informed as to the progress and status of the court case.
  - (iv) The early identification of any needs for help and assistance to give evidence in court.
  - (v) Applications for special measures<sup>31</sup> being made in good time, and if approved, the necessary facilities being available at court.

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30. CPA s.6(3)(e).

31. See further The Evidence (Special Measures) Act 2012.

## 15. THE CASE FILE AND THE COMMITTAL BUNDLE

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- 15.1 The 'case file' will typically consist of two categories of material:<sup>32</sup>
- (i) 'USED MATERIAL': This is material used in the prosecution and that is part of the case. Usually consisting of witness statements and exhibits intended to be relied upon for the purpose of establishing prima facie proof of a charge in committal proceedings – this material is ordinarily submitted as part of the committal bundle. Following committal, the bundles are transmitted to the Office of the Director of Public Prosecutions.
  - (ii) 'UNUSED MATERIAL': This is material that is relevant to the investigation but which does not actually form part of the case for the prosecution against the accused - this material is not submitted as part of the committal bundle but remains to be considered under the established rules for disclosure in criminal cases. Following committal, unused material should be transmitted to the Office of the Director of Public Prosecutions.
- 15.2 **The importance of legible documents** – As the committal proceedings procedure typically requires evidence to be examined in 'paper' form, the need for documentary evidence in the committal bundle to be in a clear, legible format is amplified. It follows that, wherever possible typed copies of witness statements should be obtained.
- 15.3 **Signed and completed documentation** – The CPA and CPA Rules impose a range of obligations regarding the appropriate signing and completion of required documents. PCJ's should exercise particular caution to ensure that these requirements are fulfilled.
- 15.4 The Committal Proceedings Rules specifically state what the required content and form of the original and copy committal bundles should be.<sup>33</sup> [Practice Direction No.1 of 2017](#) provides guidance as to supplementary material to be submitted with the bundle.
- 15.5 The component parts of the documents to be submitted for the committal proceedings process are as follows:

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32. The disclosure of any material (including unused material) should be considered in accordance with the relevant statutes, case law and guidance issued by the Director of Public Prosecutions. Particular care should be taken where it is believed that material may contain sensitive and/or confidential information.

33. Rule 17 and rule 18 respectively.

### 1. Original Bundle

Original information
List of witnesses, whose statements are relied upon
Original signed statement of witnesses named in the list of witnesses
List of exhibits relied upon
Copy of documentary exhibits relied upon
Any s.6(5)(b) notice(s)
Any dates upon which witnesses are not available for attendance at Court for committal proceedings, if required

### 2. Two copies of the committal bundle (paginated sequentially)<sup>34</sup>

Copy of original information
Copy of the list of witnesses whose statements are relied upon
Copy of original statements relied upon
Copy list of exhibits relied upon <sup>35</sup>
Copy of documentary exhibits relied upon <sup>36</sup>
Any s.6(5)(b) notice(s)

### 3. Bundle Backing

Each bundle should include a separate single page backing containing the following information:

- (i) the name and or alias of the accused;
- (ii) the charge(s);
- (iii) the name of I.O. and where he/she is stationed;
- (iv) the status of accused (Bail, bail offered (sum in which bail offered), or remanded);
- (v) the name of Attorney who represented accused at committal hearing;
- (vi) the name of the Clerk of Court who dealt with the matter.

34. Rule 18(2).

35. If an exhibit has not been copied and placed in the bundle the exhibit index should state so (r.18(3)).

36. The original being available for production during committal proceedings (r.18(d)/r.17(f)).

- 15.6 **Supplemental Bundles** – After submission of the committal bundle and prior to the commencement of the committal hearing, the Prosecution may consider it necessary to serve further evidence for examination. Such a submission is often referred to as a ‘supplemental bundle’. In practice it is the process of serving additional evidence for inclusion in the bundle, and for the consideration of the EJ. Whilst each case should be considered in accordance with the relevant law and will depend upon its individual circumstances, it is desirable that the practice of serving ‘supplemental bundles’ should be exercised in exceptional circumstances. The service of the committal bundle by way of the submission of multiple tranches of evidence should not be utilised as a method to purport to comply with the PCJ’s timetable for the preparation of the case.
- 15.7 A copy of a blank [committal certificate](#) and [standard directions](#) should be loosely affixed to the front of the judge’s committal bundle.
- 15.8 Upon committal the following material is transmitted by the Court to the Office of the Director of Public Prosecutions:
- (i) Committal bundles.
  - (ii) Unused material in possession of the prosecution.
  - (iii) Any depositions taken.<sup>37</sup>
- 15.9 From time to time the Chief Justice may issue standard directions pursuant to [rule 27](#) of the CPA Rules, such directions may contain instructions as to time standards and administrative arrangements for the efficient processing of casework. It is critical that all stakeholders remain well versed in the current regulatory framework under these directions, and early liaison between the parties in the case and the Court will assist in achieving the overriding objective of the CPA Rules. At the time of publishing this Guide two such directions have been formally issued ([see paragraph 3.1 above](#)) and are contained at pages 77–80 of this Guide.

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37. There exists a conflict between r.26(10) of the CPA Rules (which states that original depositions should be sent to the Circuit Court upon committal), and s.10 of the CPA (which mandates the Court to transmit depositions to the Office of the Director of Public Prosecutions following committal). The process required under s.10 of the Act should be adhered to.





**ACT  
RULES  
PRACTICE DIRECTION  
STANDARD DIRECTIONS**

# **INDEX TO ACT, RULES, PRACTICE DIRECTION AND STANDARD DIRECTIONS**

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**No. 24— 2013**

I assent,

[L.S.]

PATRICK L. ALLEN,  
*Governor-General.*

30th day of October, 2013.

AN ACT to Abolish preliminary examinations and to provide for the procedure relating to committal for trial in cases of indictable offences, to be known as committal proceedings, and for matters incidental thereto.

[ The date notified by the Minister  
bringing the Act into operation ]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Committal Proceedings Act, 2013, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title and  
commence-  
ment.

Abolition of preliminary examinations and introduction of committal proceedings.

2.—(1) Preliminary examinations of indictable offences are hereby abolished and, in lieu thereof, committal proceedings as provided in this Act shall be held by a Resident Magistrate sitting as an examining Justice in a Court of Petty Sessions.

(2) Reference in any enactment to “preliminary examination” or “preliminary enquiry” or other similar expression shall, unless the context otherwise requires, be construed as a reference to committal proceedings as provided in this Act.

(3) In this Act “indictable offence” means an offence that is triable in the Criminal Division of the Supreme Court.

Committal for trial on written statement.

3.—(1) Where an accused person charged with an indictable offence, appears or is brought before a Resident Magistrate and, pursuant to the *Judicature (Resident Magistrates) Act*, the Resident Magistrate makes an order that committal proceedings be held with a view to committal of that person to the Circuit Court for trial, the proceedings in relation thereto (in this Act referred to as “committal proceedings”) shall be conducted in accordance with this Act.

(2) Subject to subsections (3) and (4), committal proceedings may be conducted wholly on the basis of written statements submitted to the Resident Magistrate; and accordingly, if the Resident Magistrate is satisfied—

- (a) that all the evidence tendered (whether for the prosecution or the defence) in respect of the offence consists of written statements, with or without exhibits; and
- (b) that those statements comply with the requirements of section 6,

the Resident Magistrate may, after examining the written statements and exhibits (if any), commit the accused to stand trial or discharge him, as the case may be, in accordance with section 7.

(3) Nothing in subsection (2) shall prevent the accused person or his attorney-at-law from making a submission to the Resident Magistrate that the evidence is not sufficient to commit the accused to the Circuit Court for trial of an indictable offence

and, if any such submission is made, the Resident Magistrate shall take it into consideration in determining whether or not to commit the accused for trial.

(4) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to the committal or discharge of the accused person, inform the accused person of his right under subsection (3) to make a submission as to the insufficiency of evidence.

4.—(1) A Resident Magistrate may, in his discretion, or upon hearing a submission made pursuant to subsection (4), authorize the taking of oral evidence at the committal proceedings from any person other than the accused if he is satisfied that (whether or not a written statement from that person has been tendered in evidence) oral evidence from that person is necessary in the circumstances of the case in order for the Resident Magistrate to be able to make a decision under section 7.

Oral evidence from persons other than the accused.

(2) Where in any committal proceedings, any person other than the accused gives oral evidence before a Resident Magistrate then, subject to any enactment or rule of law authorizing the reception of unsworn statements, any oral evidence given shall be under oath and shall be subject to cross-examination.

(3) Oral evidence given under this section shall be recorded, whether in writing or by electronic means, in the form of a deposition in writing which shall be read over to the person giving the evidence and signed by him and by the Resident Magistrate.

(4) An accused person (where he is not represented by an attorney-at-law) or his attorney-at-law, may make a submission to the Resident Magistrate that any person other than the accused person should be required to give evidence in the committal proceedings.

(5) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to authorizing the taking of evidence pursuant to subsection (1), inform the accused person of his right under subsection (4) to make a submission.

(6) Where a Resident Magistrate is to hear oral evidence from any person pursuant to subsection (1), he may issue a summons or warrant, as the case may require, to cause that person to attend and give oral evidence in the committal proceedings.

Oral evidence  
by accused.

5.—(1) An accused person may at his option—

- (a) tender in evidence his own written statement;
- (b) elect to make an unsworn statement;
- (c) give oral evidence; or
- (d) remain silent.

First Schedule.

(2) If an accused person elects to make an oral statement pursuant to subsection (1), the Resident Magistrate shall, before taking that statement, caution him in the words set out in the First Schedule or words to the like effect.

(3) Any oral statement given by the accused pursuant to this section shall be—

- (a) recorded (whether in writing or by electronic means);
- (b) read over to the accused;
- (c) signed by the accused and by the Resident Magistrate;
- (d) kept with the statements and depositions (if any) of the witnesses; and
- (e) transmitted in accordance with section 10 to the Director of Public Prosecutions,

and may, upon the trial of the accused, be admitted in evidence without further proof thereof.

Requirements  
for the  
admissibility  
of written  
statements.

6.—(1) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsections (2) and (3) are satisfied, be admissible as evidence to the like effect as oral evidence by that person.

(2) The conditions referred to in subsection (1) are as follows—

- (a) the statement has been recorded (whether in writing or by electronic means) by a member of the Jamaica Constabulary Force (hereinafter referred to as “the recorder”) in the presence of a Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant, and read over to the person who made it (hereinafter referred to as “the maker”); however, in the case of a person who is suffering from a physical disability, physical disorder or a mental disorder within the meaning of the *Mental Health Act*, which renders it impracticable for him to be communicated with in the absence of special assistance or equipment, the statement may be communicated in any other effective manner;
- (b) the statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of—
  - (i) the Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace); or, as the case may be; or
  - (ii) the senior member of the Jamaica Constabulary Force;
- (c) the statement contains a declaration by the maker to the effect that it is true to the best of his knowledge and belief and in the case of a person who has attained the age of fourteen years, that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true; and
- (d) copies of the statement have been served on the parties to the proceedings in accordance with section 8.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

- (a) the statement shall state whether it is made by a person who has attained the age of eighteen years, and if it is made by a person under the age of eighteen years, it shall state the age of that person;
- (b) if the statement is made by a person under the age of fourteen years, then, subject to the provisions of the *Child Care and Protection Act* specified in subsection (4), the Resident Magistrate shall receive evidence in the manner specified in paragraph (c), from a child psychiatrist, a probation officer, or any other person (hereinafter referred to as the “assessor”) who the Resident Magistrate considers to be qualified to make an assessment of the child and who is not a party to the proceedings, in order that the Resident Magistrate may determine—
  - (i) whether the child understands the nature of an oath; and
  - (ii) if the child does not understand the nature of an oath, whether he possesses sufficient intelligence to justify the reception of the evidence and understands the duty of telling the truth;
- (c) evidence of the assessment of a child under paragraph (b) may be adduced by an oral examination of the assessor by the Resident Magistrate or by a written statement by the assessor submitted to the Resident Magistrate;
- (d) if the statement is made by a person who cannot read it, it shall be read to him or otherwise effectively communicated to him before he signs it or makes his mark, and shall be accompanied by a declaration that he has made the mark;



- (e) if the statement is made by a person who is suffering from a physical disability or physical disorder that renders him unable to sign or otherwise make a mark, but capable of otherwise affirming or negating any statement recorded, then it shall be read to him or otherwise effectively communicated to him and shall be accompanied by a declaration by the recorder that the statement has been made with the affirmation of the person, indicating the manner of such affirmation;
- (f) if the statement refers to any other document as an exhibit—
  - (i) a copy of that document shall be given to the other parties to the proceedings; or
  - (ii) such information as may be necessary shall be given in order to enable any other party to the proceedings to inspect that document and to obtain a copy thereof; and
- (g) if the statement refers to any exhibit which cannot conveniently be copied, the statement shall include information as to where the exhibit shall be available for inspection.

(4) The specified provisions of the *Child Care and Protection Act* are sections 17 to 20, which shall apply with the substitution for the words “duly qualified medical practitioner” wherever they appear, of the words “duly qualified child psychiatrist, probation officer, or any other person who the Resident Magistrate considers to be qualified to make an assessment of the child and who is not a party to the proceedings.

(5) A document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall not be admissible as evidence in the committal proceedings unless—

- (a) subject to paragraph (b), it has been produced in court as an exhibit and marked as having been so produced and the accused person has had the opportunity of inspecting the exhibit; or

- (b) in the case of an exhibit that cannot be conveniently produced in court, the parties have been served with notice of the location of the exhibit.

(6) A person whose written statement is under this section admitted in evidence in committal proceedings shall be treated for the purposes of sections 11 and 12 as a witness who has given evidence in those proceedings.

Powers of Resident Magistrate in committal proceedings.

7. Where a Resident Magistrate, having examined all the evidence before him in any committal proceedings—

- (a) is satisfied that the evidence against the accused is not sufficient to establish *prima facie* proof of the charge so that the accused ought not to be committed to stand trial for any indictable offence disclosed by the evidence, he shall discharge him; or
- (b) is satisfied that the evidence against the accused is sufficient to establish *prima facie* proof of the charge and that the accused ought to be committed for trial for an indictable offence, he shall remand the accused in custody, or admit him to bail, to stand trial for the offence charged or any other indictable offence disclosed by the evidence.

Copies of statements to be served on other parties to proceedings.

8.—(1) For the purposes of committal proceedings, steps shall be taken by the prosecution and each accused person, to make available to the other and to any other accused person in the proceedings, copies of such statements or other documents as are intended to be considered at the committal proceedings in respect of the offence charged.

(2) Subject to subsection (3), statements or other documents required by subsection (1) to be made available to any other party to the proceedings shall be served on that party not less than seven days before the sitting of the Resident Magistrate at the committal proceedings (or, as the case may be, any adjournment thereof) in which those statements or documents are to be considered.

(3) A Resident Magistrate may, in his discretion, as regards any statement or document to be considered in committal proceedings, vary the time prescribed by subsection (2); however, where on the application of any party to the proceedings, the Resident Magistrate is satisfied that that party has not had adequate time to consider the statements or documents, he may adjourn the proceedings for such time as he considers appropriate.

9. Every written statement tendered to the court and every document tendered as an exhibit in committal proceedings in accordance with section 6, shall be signed by the Resident Magistrate presiding over those proceedings.

Signing of statements by Magistrate.

10.—(1) When a Resident Magistrate has committed an accused for trial for an indictable offence pursuant to section 7, the Resident Magistrate shall forthwith transmit to the Director of Public Prosecutions, the information or complaint, the written statements, the depositions, the documentary exhibits, copies of which have been given to the other parties to the proceedings pursuant to section 6(3)(e), the warrant of commitment for trial and any recognizance entered into.

Transmission and custody of written statements and other documentary evidence taken in committal proceedings.

(2) Unless the Resident Magistrate otherwise directs, the member of the Jamaica Constabulary Force assigned as investigating officer for the case against the accused or such other member as the Commissioner of Police may designate for the purpose shall take charge of all other exhibits and shall produce them at the trial of the accused.

(3) The written statements, depositions and other documents received from the Resident Magistrate by the Director of Public Prosecutions shall be kept by him until the indictment (if any) to which they relate is filed, and shall then be transmitted to the proper officer of the court in which the accused is to be tried.

(4) A person committed for trial may be indicted not only for any offence for which he was committed for trial, but also (whether tried independently of or jointly with any such first-mentioned offence) for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the evidence before the Resident Magistrate at the committal proceedings.

False evidence  
in written  
statements.

**11.** Where any person who has attained the age of fourteen years, in any written statement tendered in evidence in committal proceedings by virtue of this Act, wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable—

- (a) upon summary conviction in a Resident Magistrate’s Court, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;
- (b) upon conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

Witness  
orders.

**12.—(1)** A Resident Magistrate conducting committal proceedings shall, in respect of each witness (other than the accused) who has given evidence in those proceedings, make an order (hereinafter referred to as a “witness order”) requiring the witness to attend and give evidence before the court before which the accused is to be tried.

(2) Every witness order made pursuant to this section shall be served by a constable or an authorized person upon the person to whom it is directed, by delivering it to the person personally or, if he cannot be found, by leaving it with some person for him at his last or more usual place of abode; and the constable or authorized person who served it shall attend at the time and place, and before the court stated in the witness order, for the purpose of proving, if necessary, the service of such order.

(3) Any person who, without just cause, disobeys a witness order requiring him to attend before any court shall be guilty of contempt of that court and may be punished summarily by that court as if his contempt had been committed in the face of the court, so, however, that no person shall by reason of such disobedience be liable to imprisonment for a period exceeding three months.

(4) In this section, “authorized person” means a person authorized for the purpose by a Resident Magistrate.

13.—(1) Where a witness who is required to attend before a court by virtue of a witness order fails to attend in compliance with such order, the court may—

Further process to secure attendance.

- (a) cause to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice; or
- (b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just cause, or if he has failed to comply with a notice under paragraph (a), issue a warrant for his arrest, and upon such arrest he shall be brought before the court.

(2) A witness brought before the court in pursuance of a warrant under this section may be remanded by that court in custody or be admitted to bail (with or without sureties) until such time as the court may appoint for receiving the evidence or dealing with him as provided under section 12(3).

(3) Where a witness attends a court in pursuance of a notice under this section, the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence or dealing with him, as the case may be.

14.—(1) Any room or building in which a Resident Magistrate conducts committal proceedings shall, subject to subsections (2) and (5), be deemed an open court for that purpose.

Room where committal proceedings are held deemed open court.

(2) Subject to subsections (3) and (4), a Resident Magistrate may, where he considers it necessary or expedient in the interests of justice, exclude from the proceedings persons other than the parties thereto and their attorneys-at-law.

(3) An accused person (where he is not represented by an attorney-at-law) or his attorney-at-law may, where the Resident Magistrate proposes to exercise his discretion under subsection

(2) to exclude persons, make a submission to the Resident Magistrate on whether that discretion should be exercised.

(4) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to the exercise of his discretion under subsection (2), inform the accused person of his right under subsection (3) to make a submission.

(5) Subsection (1) shall not apply in any case where, pursuant to any provision of law, the categories of persons who may be present during committal proceedings is restricted.

Adaptation of forms from *Justices of the Peace Jurisdiction Act*.

**15.—**(1) Until other provision is made pursuant to this Act, the forms set out in the Schedule to the *Justices of the Peace Jurisdiction Act* shall, where relevant, apply *mutatis mutandis* to the provisions of this Act as respects committal proceedings, in like manner as, immediately prior to the commencement of this Act, they applied to preliminary examinations.

(2) The forms referred to in subsection (1), in their application to proceedings under this Act, may be adapted or modified to meet the varying circumstances of each case which may have arisen, or may arise, under this Act.

Rules.

**16.** The Rules Committee of the Resident Magistrates' Courts may, subject to the approval of the Minister, make rules for carrying this Act into effect and, without prejudice to the generality of the foregoing, may make rules—

- (a) prescribing and regulating the use of forms required for the purposes of this Act, whether or not in substitution for forms referred to in section 15;
- (b) prescribing anything required to be prescribed pursuant to this Act; and
- (c) imposing and regulating the collection of fees in such circumstances as the Committee thinks fit.

**17.** The provisions of the *Justices of the Peace Jurisdiction Act* specified in the first column of the Second Schedule to this Act are amended as specified in the second column of that Schedule.

Amendment to *Justices of the Peace Jurisdiction Act*.  
Second Schedule.

**18.—(1)** The provisions of the Acts specified in the first column of the Third Schedule to this Act are amended in the manner respectively so specified in the second column of that Schedule.

Amendment to various other Acts.  
Third Schedule.

(2) The Minister may, from time to time, by order subject to affirmative resolution, amend any other enactment to the extent necessary consequent on the provisions of this Act.

**19.** The Minister may, by order subject to affirmative resolution, amend or vary any fine under this Act.

Minister may vary fines.

**20.** This Act shall be reviewed, not later than three years after the coming into operation of this Act, by a Joint Select Committee of Parliament appointed for that purpose.

Review of Act.

**21.—(1)** In this section—

Transitional.

“commencement date” means the date of commencement of this Act;

“existing charge” means a charge for an indictable offence which has been laid against an accused person, prior to the commencement date.

(2) Committal proceedings under this Act shall be conducted with respect to an existing charge in lieu of any preliminary examination with respect thereto, where—

- (a) as at the commencement date, a preliminary examination has not already commenced; or
- (b) notwithstanding the commencement of a preliminary examination prior to the commencement date, the preliminary examination is incomplete as at that date and the accused person elects to have the proceedings conducted by way of committal proceedings under this Act.

(3) As regards an existing charge with respect to which a preliminary examination has commenced prior to the commencement date and is incomplete as at that date, if the accused person does not elect to have the proceedings conducted by way of committal proceedings under this Act, this Act (other than this section) shall not apply to that existing charge and the preliminary examination shall continue to its conclusion in accordance with the law in operation immediately prior to the commencement date.

(4) Where committal proceedings are conducted pursuant to subsection (2) with respect to an existing charge, those proceedings may be conducted on the basis of written statements made prior to the commencement date, and each such statement shall be treated as being in compliance with the requirements of section 6, if—

- (a) the statement is read over or otherwise communicated to the person who made it (hereinafter referred to as “the maker”) in the presence of a Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant, and is endorsed by the maker and the person reading it over or otherwise communicating it to the maker, in the manner specified in section 6(2), which provision shall apply, with such modifications as may be necessary, to the statement, as it applies to a statement tendered in evidence under section 6; or
- (b) the statement was made by a person who is absent from the proceedings in circumstances that fall within section 31D of the *Evidence Act*, and the statement would have been admissible in relation to a preliminary examination of the offence conducted prior to the commencement date.



FIRST SCHEDULE

(Section 5 (2))

“You are not obliged to say anything in answer to the charge unless you desire to do so; but whatever you say will be taken down in writing and may be given in evidence upon your trial”.

## SECOND SCHEDULE

(Section 17)

*Provisions of the Justices of the Peace Jurisdiction  
Act repealed or amended*

Provisions of the Act —————	Amendment —————
Heading to Part II of the Act	Delete the words “Preliminary Examination” and substitute therefor the words “Committal Proceedings”.
Section 29	<p>1. Delete the words “to answer to such charge or complaint, and to be further dealt with according to law” and substitute therefor the words “to be dealt with according to law”.</p> <p>2. Delete from the first proviso the words “to answer to the said charge or complaint, and to be further dealt with according to law” and substitute therefor the words “to be dealt with according to law”.</p>
Sections 31, 32 and 33	<p>1. Delete in each case all the words appearing immediately after the words “evidence adduced on the part of the prosecution”.</p> <p>2. In section 32 delete the words “to answer to the said charge, and to be further dealt with according to law” and the words “to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law” and substitute therefor in each case the words “to be dealt with according to law”.</p> <p>3. In section 33 delete the words “to answer to the charge contained in the said information and to be further dealt with according to law” and substitute therefor the words “to be dealt with according to law”.</p>
Sections 34 to 38 (inclusive)	Repeal.
Section 39(1)	Delete all the words appearing before the words “it shall be lawful” and substitute therefor the words “if, for any reasonable cause it becomes necessary or advisable to do so,”.

Provisions of the Act

Amendment

Section 39 (2)	<ol style="list-style-type: none"> <li>1. Delete the words “to defer the examination or further examination of an accused party” and substitute therefor the words “or desirable as aforesaid,”.</li> <li>2. Delete the words “until the day to be appointed for the examination or further examination,”.</li> <li>3. Delete all the words appearing after the words “it shall be lawful for the said Justice or Justices” and substitute therefor the words “to order accordingly”.</li> </ol>		
Section 39 (3)	Delete the words “for continuing such examination”.		
Section 40	<p>Repeal and substitute therefor the following—</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 30%; padding-right: 10px;"> <p>“Appearance of accused in parish other than that where offence charged to have been committed.</p> </td> <td style="vertical-align: top;"> <p>40.—(1) Where a person appears, or is brought before a Justice in the parish in which that Justice has jurisdiction, charged with an offence alleged to have been committed by that person in any other parish the Justice or Justices shall act in accordance with subsection (2).</p> <p>(2) The Justice shall examine such witnesses and receive such evidence as is produced before him in proof of the charge and if in his opinion the evidence is—</p> <ol style="list-style-type: none"> <li>(a) sufficient proof of the charge the Justice shall remand the accused person in custody or grant him bail in accordance with the Bail Act;</li> </ol> </td> </tr> </table>	<p>“Appearance of accused in parish other than that where offence charged to have been committed.</p>	<p>40.—(1) Where a person appears, or is brought before a Justice in the parish in which that Justice has jurisdiction, charged with an offence alleged to have been committed by that person in any other parish the Justice or Justices shall act in accordance with subsection (2).</p> <p>(2) The Justice shall examine such witnesses and receive such evidence as is produced before him in proof of the charge and if in his opinion the evidence is—</p> <ol style="list-style-type: none"> <li>(a) sufficient proof of the charge the Justice shall remand the accused person in custody or grant him bail in accordance with the Bail Act;</li> </ol>
<p>“Appearance of accused in parish other than that where offence charged to have been committed.</p>	<p>40.—(1) Where a person appears, or is brought before a Justice in the parish in which that Justice has jurisdiction, charged with an offence alleged to have been committed by that person in any other parish the Justice or Justices shall act in accordance with subsection (2).</p> <p>(2) The Justice shall examine such witnesses and receive such evidence as is produced before him in proof of the charge and if in his opinion the evidence is—</p> <ol style="list-style-type: none"> <li>(a) sufficient proof of the charge the Justice shall remand the accused person in custody or grant him bail in accordance with the Bail Act;</li> </ol>		

## Provisions of the Act

Section 40, *contd.*

## Amendment

- (b) not sufficient to put the accused person upon trial for the offence charged then he shall—
- (i) by warrant under his hand according to Form (24) in the First Schedule, order the accused person to be taken before the Justice in the parish where the offence is alleged to have been committed; and
  - (ii) at the same time deliver the information and complaint and any other relevant documents to the constable or other officer responsible for

Provisions of the Act	Amendment
Section 40, <i>contd.</i>	the execution of the warrant to be delivered by him to the Justice referred to in sub-paragraph (i).”.
Section 41	Delete the words “after taking the examinations, in writing as aforesaid” and the words “with the examinations,”.
Sections 43 to 45 (inclusive)	Repeal.
Section 47	Delete the words “under Part II” wherever they appear and substitute therefor, in each case, the words “under the Committal Proceedings Act, 2013”.
Section 63	Delete the words “under Part II” and substitute therefor the words “under the Committal Proceedings Act, 2013”.
Section 64(1)	Delete the words “proceedings before examining Justices” and substitute therefor the words “committal proceedings”.
Section 72	Delete the words “the examination or further examination” and substitute therefor the words “committal proceedings”.

## Provisions of the Act

## Amendment

*First Schedule*

## Part II

Form (16)	Delete the words “to answer unto the said charge, and to be further dealt with” and substitute therefor the words “to be dealt with”.
Form (17)	Delete the words “to answer to the said charge, and to be further dealt with” and substitute therefor the words “to be dealt with”.
Form (18)	Delete the words “to answer to the said charge, and to be further dealt with” and substitute therefor the words “to be dealt with”.
Form (23)(a)	Delete the words “to answer further to the said charge, and to be further dealt with” and substitute therefor the words “to be dealt with”.
Form (23)(b)	Delete the words “to answer (further) to the said charge, and to be further dealt with” and substitute therefor the words “to be dealt with”.
Form (23)(c)	Delete the words “to answer further to the said charge made against you by C.D., and to be further dealt with” and substitute therefor the words “to be dealt with”.
Form (24)	Delete the words “to answer further to the said charge, and to be further dealt with” and substitute therefor the words “to be dealt with”.

THIRD SCHEDULE

(Section 18)

Enactment

Amendment

The Criminal Justice  
(Administration) Act

Section 2

Delete from subsection (3) all the words appearing after the words “or evidence disclosed” and substitute therefor the words “in any written statements or depositions taken before a Resident Magistrate in committal proceedings and transmitted to such Court pursuant to the Committal Proceedings Act, 2013”.

The Evidence Act  
Section 9

In paragraph (h) delete the words “section 36 of the Justices of the Peace Jurisdiction Act;” and substitute therefor the words “section 6 of the Committal Proceedings Act, 2013”.

The Gun Court Act  
Section 5

Delete from paragraph (a) of subsection (1) the words “preliminary examination” and substitute therefor the words “committal proceedings under the Committal Proceedings Act, 2013”.

Section 6

Delete from subsection (2) (a) (ii) and subsection (2) (b) the words “a preliminary examination” wherever they appear and substitute therefor in each case the words “committal proceedings”.

Section 12

Delete from subsection (2) the words “preliminary examination” and substitute therefor the words “committal proceedings”.

The Judicature  
(Resident  
Magistrates) Act  
Section 40

Delete the words “preliminary examinations” and substitute therefor the words “committal proceedings”.

Section 64

1. Delete from the first paragraph the words “take all necessary and requisite preliminary

Enactment	Amendment
—	—
	examinations and depositions on” and substitute therefor the words “conduct all committal proceedings in respect of”.
	2. Delete from the marginal note the words “take all preliminary examinations of” and substitute therefor the words “conduct all committal proceedings re”.
Section 272	Delete the words “a preliminary investigation shall be held” and substitute therefor the words “committal proceedings shall be held in accordance with the Committal Proceedings Act, 2013”.
Section 274	Delete the words “preliminary examinations” and substitute therefor the words “committal proceedings”.
Section 276	<p>1. Delete the words beginning with “begun to deal” and ending with “committal for trial” and substitute therefor the words “ordered that committal proceedings be held”.</p> <p>2. Delete from the section the words “a preliminary investigation” and substitute therefor the words “committal proceedings”.</p> <p>3. Delete all the words appearing after the words “need not be taken again”; and substitute therefor the words “but if the Magistrate thinks fit, or if the accused person so requires, every such witness shall be called or, as the case may be, recalled for examination and cross examination”.</p> <p>4. Delete from the marginal notes the words “preliminary investigation” wherever they appear and substitute therefor in each case the words “committal proceedings”.</p>
Section 279	Delete all the words beginning with “In any trial” and ending with “Justices of the Peace



Enactment

Amendment

Jurisdiction Act;” and substitute therefor the following words—

“ In any trial of an indictment before a court or in any committal proceedings, the Magistrate shall have power of adjourning the trial or committal proceedings;”.

Section 286

1. Delete the word “examination” and substitute therefor the words “committal proceedings”.

2. Delete from the marginal note the words “on examination” and substitute therefor the words “for committal proceedings”.

The Witnesses’  
Expenses Act  
Section 7

1. Delete the words “a preliminary enquiry is” and substitute therefor the words “committal proceedings are”.

2. Delete the words “preliminary enquiry” and the word “enquiry” wherever they appear and substitute therefor in each case the word “proceedings”.

3. Delete the marginal note and substitute therefor the words “Committal proceedings.”

Section 8

1. Delete the words “preliminary enquiry” where they first appear and substitute therefor the words “committal proceedings”.

2. Delete the words “preliminary enquiry was” and substitute therefor the words “committal proceedings were”.

Section 16

1. Delete from paragraph (c) of subsection (2) the words “preliminary enquiries” and

Enactment  
—Amendment  
—

substitute therefor the words “committal proceedings”.

2. Delete from paragraph (d) of subsection (2) the words “preliminary examinations” and substitute therefor the words “committal proceedings”.

Passed in the Senate this 19th day of April, 2013 with twenty-one (21) amendments.

STANLEY ST. J. REDWOOD  
*President.*

Passed in the House of Representatives this 15th day of October, 2013.

MICHAEL A. PEART  
*Speaker.*

*This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.*

*/sgd./ H.E. Cooke*  
*Clerk to the Houses of Parliament.*



THE  
**JAMAICA GAZETTE**  
**SUPPLEMENT**

**PROCLAMATIONS, RULES AND REGULATIONS**

516A

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THURSDAY, NOVEMBER 17, 2016

No. 74A

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No. 128A

**THE COMMITTAL PROCEEDINGS ACT**

**THE COMMITTAL PROCEEDINGS RULE, 2016**

In exercise of the powers conferred upon the Rules Committee of the Parish Courts by section 135 of the Judicature (Parish Courts) Act and section 16 of the Committal Proceedings Act, and of every other power hereunto enabling, the following Rules are made, subject to the approval of the Minister:—

Citation. 1. These Rules may be cited as the Committal Proceedings Rules, 2016.

Interpretation. 2. In these Rules—

“committable offence” means an indictable offence in relation to which committal proceedings may be brought as provided in the Act;

“examining Justice” means the Judge of the Parish Court sitting as an examining Justice in a Court of Petty Sessions in accordance

with section 2 of the Act; “Preliminary Report” means a report drafted for the purpose set out in rule 5;

“Prosecution” includes all prosecution agencies, the police, and any agency which works under the auspices of those bodies.

The  
overriding  
objective.

3.—(1) The overriding objective of these Rules is to ensure that committal proceedings proceed as swiftly as is reasonably possible, and consistent with a fair and just process.

(2) All parties are expected to assist the Judge of the Parish Court in achieving the overriding objective of these Rules, in particular by avoiding inefficiency and unnecessary delay.

(3) Any deficiency on the part of the prosecution in providing material shall be regarded as a deficiency in the prosecutorial process.

(4) Subject to paragraph (5), persons remanded in custody shall be entitled to have their cases dealt with as expeditiously as is reasonably possible.

(5) The Judge of the Parish Court shall take into account the following matters when setting a timetable and resolving any application for an adjournment—

- (a) the fact that an accused person is remanded in custody; and
- (b) the needs of witnesses, particularly vulnerable witnesses and the effect of any delay upon those witnesses.

(6) Notwithstanding the powers of the Judge of the Parish Court contained herein, it shall also be part of the overriding objective that cases should not be subject to substantial delay, after committal.

(7) It is an important element in achieving the overriding objective that the case file shall be substantially complete, by the time of the committal proceedings.

Duty of  
prosecution  
to provide  
Preliminary  
Report.

4. At the first hearing of a person charged with a committable offence, the Prosecution shall, for the purpose set out in rule 5, make available to the Court and the defence a Preliminary Report.

Purpose of  
Preliminary  
Report.

5. The purpose of the Preliminary Report is—

- (a) to enable the Judge of the Parish Court to—
  - (i) make a decision, where appropriate, whether to accept jurisdiction and try the case in the Parish Court or to

hold committal proceedings to ascertain whether there is a case to answer; and

(ii) set a realistic timetable for the preparation of committal proceedings; and

(b) to enable the accused person or his Attorney-at-Law to have sufficient information to make submissions about the timetable.

Content of Preliminary Report.

6. The Preliminary Report shall contain the following information—

- (a) the name and date of birth of the accused person;
- (b) a list of the charges which the accused person faces in the current proceedings before the Judge of the Parish Court;
- (c) a summary of the evidence currently in the hands of the prosecution, in sufficient detail for the defence and the Judge of the Parish Court to appreciate the main facts of the case, the number of witnesses and the number of exhibits;
- (d) any features of the case which the prosecution contend are aggravating features;
- (e) details of any vulnerable witnesses (or defendant);
- (f) a statement of the work still to be undertaken in preparing the case;
- (g) any third party disclosure, including medical certificates, which has been sought and the date upon which it was sought;
- (h) an indication of likely issues in the case, if practicable to provide this information;
- (i) a realistic time estimate for the prosecution to be in a position to serve all statements and exhibits upon which the prosecution proposes to rely, for the purpose of committal proceedings; and
- (j) where appropriate, any submission about the appropriate venue for trial.

Disclosure issues.

7.—(1) Any issue which the prosecution has with regard to disclosure of information to the defence shall be subject to the usual rules regarding Public Interest Immunity and shall be for the Judge of the Parish Court to resolve.

(2) This rule shall be applicable to the Preliminary Report.

Service of Preliminary Report.

8.—(1) If possible, the Preliminary Report shall be served on both the Judge of the Parish Court and the accused person or his attorney-at-law by 4:00 p.m. on the day before the first court appearance.

(2) Service can be undertaken personally or by e-mail, facsimile or any appropriate means of service.

(3) Where it is not reasonably possible to serve the Preliminary Report as set out in paragraph (1), it shall be made available to the Court, and the accused person or his attorney-at-law, not less than thirty minutes before the time at which the Judge of the Parish Court will commence sitting on the day of the hearing.

(4) Service of the Preliminary Report shall not occur unless the report has been approved by the Prosecutor, Crown Counsel or the equivalent.

Failure to  
serve  
Preliminary  
Report.

9.—(1) The Judge of the Parish Court shall not proceed without a Preliminary Report.

(2) In the event of a failure to serve a Preliminary Report, the Judge of the Parish Court shall make one of the following decisions—

- (a) require the prosecution, if such is reasonably practical, to prepare a Preliminary Report in Court and serve the Preliminary Report on the Judge of the Parish Court and the accused person or his attorney-at-law;
- (b) grant an adjournment of up to fourteen days for the report to be prepared and served;
- (c) if the parties agree, in exceptional circumstances, permit the prosecution to give an oral summary of the matters set out in rule 7;
- (d) if either or both parties disagree, but the Judge of the Parish Court considers that, in the interests of justice, the matter can, in exceptional circumstances, proceed by way of an oral summary, permit (or require) the prosecution to give an oral summary of the matters set out in rule 6; or
- (e) discharge the accused person for want of prosecution.

(3) In making a decision under paragraph (2), the Judge of the Parish Court shall consider—

- (a) the complexity of the case;
- (b) the risk of prejudice to either side; and
- (c) the interests of justice.

(4) The discharge of an accused person for want of prosecution under paragraph (2)(e) shall not preclude the prosecution from re-charging at a later date.

(5) Nothing in these Rules affects the jurisdiction of the Judge of the Parish Court or examining Justice in cases of abuse of process.

Powers of Judge upon service of a Preliminary Report.

10. Upon service of a Preliminary Report, the Judge of the Parish Court shall—

- (a) ensure that the accused person or his Attorney-at-Law have had an opportunity to consider the Preliminary Report;
- (b) where appropriate, make a decision about whether or not to accept jurisdiction;
- (c) set a timetable for the preparation and service of an original committal bundle and copy committal bundles upon the court and the accused person or his Attorney-at-Law;
- (d) on the assumption that the committal proceedings will be short form “paper committal” proceedings (no oral evidence) fix a date for committal proceedings to take place.

Acceptance or refusal of jurisdiction.

11.—(1) Subject to paragraph (2), the decision whether to accept or refuse jurisdiction is a judicial decision for the Judge of the Parish Court.

(2) In reaching his decision, the Judge of the Parish Court shall apply the following guidelines, or state specifically that he has not done so and give brief reasons why.

(3) The Judge of the Parish Court shall accept jurisdiction unless at least one of the following apply—

- (a) the offence is one which shall be tried in the Circuit Court;
- (b) the offence (or combination of offences) upon which the accused person stands charged is so serious that the sentencing powers of the Judge of the Parish Court, upon conviction after trial, would be inadequate to reflect that seriousness;
- (c) the case is one of such complexity, seriousness or high public interest that it is appropriate for it to be tried in the Circuit Court; or
- (d) circumstances exist which make it in the interests of justice for the case to be tried in the Circuit Court.

(4) Where the Judge of the Parish Court has applied the guidelines and reached the decision to refuse jurisdiction, he should state which of the grounds he considers applicable to the case and, where practicable, state very briefly, why he has reached that conclusion.

Purpose of committal proceedings

12.—(1) The purpose of committal proceedings is for the Court to be satisfied that there is a *prima facie* case against the accused person.

(2) Committal proceedings shall not be conducted in a manner that gives a party to the proceedings an opportunity to test the witnesses and except where there are substantial flaws in the evidence of prosecution witnesses, issues of witness credibility are for the ultimate tribunal of fact to resolve at trial.

Duty of  
prosecution.

13.—(1) Subject to these Rules, for the purposes of committal proceedings, the prosecution shall be obliged to place before the Court evidence sufficient to establish that there is a *prima facie* case against the accused person and it is not necessary for the prosecution to be “trial ready” at this stage.

(2) Notwithstanding that it is part of the overriding objective that the file shall be substantially complete by the time of committal, the examining Justice may permit or require committal proceedings to take place where the prosecution has not completed their file and material remains outstanding where he considers it in the interests of justice to do so.

(3) In exercising his discretion to permit or require the prosecution to proceed, the examining Justice shall take into account—

- (a) the complexity of the case;
- (b) the nature of the outstanding material and, in particular, whether it could have any realistic effect on the outcome of the committal proceedings, given the issues which need to be resolved;
- (c) the amount of time which is required before the material will become available and the efforts which have already been made to obtain the material;
- (d) the extent of the prejudice to either side if the material is not obtained;
- (e) the extent of the prejudice to either side if the matter is delayed;
- (f) the conduct of the parties, with regard to the obtaining of the material;
- (g) the attitude of the parties; and
- (h) such other matter as he considers appropriate.

(4) Where the prosecution and the defence agree about the relevance and importance of the unavailable material to the issue of committal, the examining Justice shall regard this as a significant matter.

(5) Where the seriousness of the allegations is a relevant matter, the expectation is that such cases require greater expedition and effort to be ready on time.



(6) The mere fact that a case is serious shall not, of itself, be a definitive matter.

Committal proceedings to be adversarial.

14. Committal proceedings shall be adversarial in nature.

Decision whether to commit.

15. The examining Justice shall decide the issue of whether to commit solely on the basis of the committal bundle, exhibits produced, and any oral evidence that is adduced before him.

Completion of files.

16.—(1) Subject to paragraph (2), the prosecution shall prepare the file and make submissions to the examining Justice as to its completeness.

(2) At no time shall any Judge of the Parish Court or the examining Justice inspect a file for the purpose of indicating whether or not the file is complete, nor shall he decide or direct whether a file is complete.

Content of original committal bundle.

17. The original committal bundle shall contain the following—

- (a) the original information which is the subject matter of the proceedings;
- (b) a list of witnesses whose statements are relied upon by the prosecution for the purposes of establishing a *prima facie* case against the accused person;
- (c) any dates upon which witnesses are not available for attendance at Court for committal proceedings, if required;
- (d) the original signed statement of each of the witnesses listed at (b) above;
- (e) a list of the exhibits upon which the prosecution seeks to rely for the purpose of establishing a *prima facie* case against the accused person;
- (f) a copy of the exhibit, if documentary (the original being available for production during committal proceedings); and
- (g) any notice pursuant to section 6(5)(b) of the Act.

Content of copy committal bundle.

18.—(1) A copy committal bundle shall contain the following—

- (a) a copy of the original information which is the subject matter of the proceedings;
- (b) a copy of each of the witness statements included in the original bundle;
- (c) a copy of the list of witnesses whose statements are relied on, stating the pages in the bundle at which each statement is to be found;

- (d) a copy of each of the exhibits relied upon pursuant to rule 17(f);
- (e) a copy of the list of exhibits that are relied upon; and
- (f) any notice under section 6(5)(b) of the Act.

(2) A copy committal bundle shall be paginated sequentially.

(3) A copy committal bundle shall contain an index of the pages in the bundle at which each exhibit is to be found (or stating, in terms, if the exhibit has not been copied and included in the bundle).

(4) The copy statements shall not disclose the address and dates of birth of any witness, unless the address and dates of birth are relevant to the charge and are included in the body of the statement.

Setting a timetable for committal proceedings.

19.—(1) At the hearing at which the Preliminary Report is submitted, the Judge of the Parish Court shall fix a date for the service of committal bundles and for a committal hearing.

(2) In setting a timetable, the Judge of the Parish Court shall have regard to the guidelines set out in rule 20.

(3) Where the Judge of the Parish Court fails to have regard to the guidelines, the Judge of the Parish Court shall state the reasons why the guidelines are not followed.

Guidelines.

20.—(1) Unless expressly stated by the Judge of the Parish Court not to apply, each of these guidelines applies in any particular case.

(2) Except in complex cases and exceptional circumstances or unless otherwise directed by the Court, the prosecution shall prepare and serve on the Court, not later than sixty calendar days from the hearing at which the Preliminary Report was served, an original and a copy committal bundle.

(3) At the same time as a bundle is served upon the Court, a copy bundle shall be served on the accused person or his Attorney-at-Law.

(4) Where the accused person is not represented by an Attorney-at-Law, the Judge of the Parish Court shall be entitled to require the accused person to attend Court for the purposes of receiving this bundle.

(5) A hearing will take place as soon as reasonably practicable and not later than sixty calendar days after the date for service of the bundles.

(6) Unless, in the opinion of the Judge of the Parish Court, it is not practicable so to do, the date shall be fixed by the Judge of the Parish Court at the time he sets out the timetable as described in rule 19.

(7) The Judge of the Parish Court shall fix a date for the parties to attend (after the service of committal bundle) for the purposes of fixing a date and identifying the length of the hearing.

(8) It will be assumed that, at this hearing, if all rules relating to service of papers have been complied with, the Judge of the Parish Court shall conduct committal proceedings based solely on the documents in the bundle, pursuant to his powers in section 3(2) of the Act without any oral evidence being placed before him by any party.

Notification  
and conduct  
of mention  
hearing.

21.—(1) If any of the circumstances set out in paragraph (2) apply, it will be the obligation of the party affected, as soon as that party realizes that it is necessary, to notify the court and the other parties of the need for a mention hearing before the Judge of the Parish Court.

(2) The circumstances are—

- (a) the prosecution realizes before the expiry of sixty calendar days from the service of the Preliminary Report (or such other time as has been directed by the Judge of the Parish Court) that the party will be unable to comply with the time limit for serving the original and copy committal bundles;
- (b) the prosecution fails to serve the original and copy committal bundle after the expiry of sixty days from the service of the Preliminary Report; or
- (c) upon receiving the copy committal bundle, either party wishes to apply for oral testimony to be given at the committal hearing.

(3) A mention hearing shall be fixed administratively by the Court and the date notified to the parties.

(4) In circumstances where paragraph (2)(a) or (b) applies, the Judge of the Parish Court may—

- (a) set a new timetable for service of material and a date for hearing;
- (b) enforce compliance, as closely as possible with the current timetable; or
- (c) apply any of the sanctions set out in rule 23.

(5) At the mention hearing, for the purposes of making an application for a witness to give oral testimony, the party shall be prepared to explain which witness the party wishes to give oral evidence and, in general terms, the reasons for such an application.

(6) The Judge of the Parish Court shall not accede to such a request if he is sure that the oral testimony of the witness can have no bearing on the issues before the court

(7) The parties shall be in a position to assist the court with witness availability and a realistic time estimate for the hearing.

(8) The Judge of the Parish Court shall set a date for the committal proceedings consistent with the requirements of the overriding objective.

Power of the Judge to fix mention dates.

22. Where the Judge of the Parish Court considers it appropriate, either as a means of furthering the overriding objective or in the interests of justice, he may, at the time of the decision as to jurisdiction, fix dates for mention with a view to ensuring compliance by each party with the obligations set out in rules 20 and 21.

Sanctions for non-compliance.

23.—(1) If the prosecution fails to serve material as required by these Rules, the Judge of the Parish Court or examining Justice, should he decline either to adjourn the hearing or set a new timetable or otherwise excuse the failure, may in the interests of justice do one of the following—

- (a) rule inadmissible for the purposes of committal proceedings only, any material which has not yet been served;
- (b) decline to hear oral testimony from a witness whom the prosecution wishes to give such evidence;
- (c) discharge the accused person for want of prosecution.

(2) A discharge shall not preclude the prosecution from re-charging at a later date.

(3) Nothing in these Rules affects the jurisdiction of the Judge of the Parish Court or examining Justice in cases of abuse of process.

Adjournments.

24. If the prosecution, or accused person or his Attorney-at-Law, fails to notify the Court of the wish to have a witness give oral evidence, the Judge of the Parish Court may—

- (a) decline to adjourn the proceedings for the purposes of that witness being available to give such evidence and proceed on his statement; or
- (b) if the interests of justice so require, adjourn the proceedings to a new date for the evidence to be taken orally.

Committal proceedings conducted without oral evidence.

25.—(1) Where the committal proceedings are conducted without any oral evidence, the following procedure shall be followed—

- (a) the prosecution shall set out the charges upon which they seek committal;
- (b) except where both prosecution and defence agree that the statement can be summarized, the prosecution may read out each statement;
- (c) the examining Justice (or the Clerk of Courts) will ensure that the original statement for each witness has been properly signed

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and dated by them or, where the defendant is represented and the parties agree, the examining Justice may read the statements and exhibits privately and confirm, in open court, which statements and exhibits he has read.

(2) Where the examining Justice acts in accordance with paragraph (1), he shall confirm, in open court, that each statement complies with the formalities required by section 6 of the Act.

(3) Each witness statement, document or exhibit tendered in accordance with section 6 of the Act shall be signed by the examining Justice presiding over the committal proceedings.

(4) Either party may request that one or more statements be read out in open court, even if the rest of the bundle is read privately by the examining Justice.

(5) Once it has been confirmed that the formalities have been properly observed and the statement has been read, the examining Justice will state, in open court, that this statement is admitted into evidence and, if the case is committed, that the witness is required to attend the trial at a date and time to be notified to them by the Court, unless notified to the contrary.

(6) If a statement is not admissible by reason of its failure to satisfy the formalities of the Act, the examining Justice will decline to admit the evidence in its current form.

(7) The prosecution or defence may—

- (a) apply to adjourn for the formalities to be rectified (which application the examining Justice may allow or adjourn in his discretion);
- (b) ask the examining Justice to allow the witness to give oral evidence (which he may permit, if no injustice will follow); or
- (c) choose to continue without the evidence of that witness.

(8) At the end of all of the prosecution evidence, the examining Justice, of his own motion, may require the prosecution to show why there is a case to answer.

(9) The accused person is entitled to submit that there is no case for him to answer.

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(10) Following submissions from both parties, the examining Justice shall decide whether there is a *prima facie* case and if, in his judgment, there is not a *prima facie* case, he shall—

- (a) announce so in open court, giving brief reasons for his decision; and
- (b) discharge the accused person,

and if the examining Justice finds that a *prima facie* case has been made out, he will ask the accused person or his Attorney-at-Law which of his options under section 5(1) of the Act he wishes to exercise.

(11) If the accused person is not represented by an Attorney-at-Law, the examining Justice shall—

- (a) explain each option to the accused person and the effect of section 5(3) of the Act; and
- (b) consider any application to adduce defence evidence pursuant to section 4 of the Act and, if granted, permit that person to give evidence.

(12) A statement may be adduced on behalf of the defence, in the usual way, if all formalities are satisfied and the prosecution does not wish to apply for the witness to be present in court for cross-examination.

(13) If the defence does not seek to adduce any evidence at the proceedings the examining Justice will act in accordance with paragraph (15).

(14) If the defence have adduced evidence, at the close of all the evidence the examining Justice will invite them to make any further submission as to whether there is a *prima facie* case.

(15) If the examining Justice finds that a *prima facie* case has been made out on any charge, he shall commit the accused person for trial on those charges and issue the standard directions for cases committed to the Circuit Court set out in Annex A.

Annex A.

(16) The examining Justice may commit on the charges on the information and/or on any other charge in respect of which a *prima facie* case is made out.

Annex B.

(17) The Court shall issue a Certificate of Committal to the Circuit Court in the form set out in Annex B which shall be signed by the examining Justice.

(18) The Certificate of Committal to the Circuit Court shall contain the following information—

- (a) the date of the proceedings;

- (b) the name of the committing Court and the examining Justice;
- (c) the name of the accused person;
- (d) the date of birth of the accused person;
- (e) the address of the accused person;
- (f) that no witnesses gave oral evidence;
- (g) the charges upon which the accused person was committed;
- (h) the venue of the Circuit Court to which the accused person was committed;
- (i) any date set for first hearing in the Circuit Court;
- (j) confirmation that standard directions were served on each party;
- (k) whether the accused person was remanded on bail or in custody; and
- (l) the name of the individual assigned or designated to take charge of the exhibits, in accordance with section 10(2) of the Act.

Committal proceedings conducted with oral evidence.

26.—(1) Where the committal proceedings are conducted with oral evidence, the following procedure shall be followed—

- (a) the prosecution shall set out the charges upon which it seeks committal;
- (b) the prosecution will call such witnesses who are to give oral evidence;
- (c) the witness will be sworn or affirmed and be examined in chief by the prosecution;
- (d) it shall be permissible, if both sides and the examining Justice agree for the witness statement of the witness to stand as his evidence in chief for the purposes of the committal proceedings only if the following conditions apply—
  - (i) the original statement is available in court;
  - (ii) the witness confirms that it is his statement;
  - (iii) the contents of the statement are true to the best of his knowledge and beliefs; and
  - (iv) the signature upon the statement is his own;
- (e) the witness may be cross-examined by or on behalf of the accused person;
- (f) the prosecution may re-examine; and
- (g) the examining Justice may ask questions at any stage.

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(2) A verbatim record of the evidence shall be kept by the examining Justice.

(3) If the verbatim record of the evidence is written or typed, then, once the witness has completed his evidence, or at the end of each court day if his evidence lasts longer than one day, the Clerk of the Courts shall read his evidence out aloud to the witness.

(4) The witness shall be asked to verify that the evidence is an accurate record of what was said by him and any additional comments or corrections shall be recorded at the end of the evidence.

(5) The witness shall then confirm his agreement that the evidence is true and accurate by signing and dating all the pages; and after the document has been signed and dated, the signed document shall become the deposition of the witness.

(6) The examining Justice shall inform the witness that, if the accused person is committed for trial in the Circuit Court, he shall be required to attend the trial to give evidence at such time as the Court shall direct.

(7) The Court shall copy and provide each party with a copy of the deposition within twenty-eight days of committal.

(8) If the evidence of the witness is recorded by means of a recording device, the Court shall be responsible for arranging for the recording to be transcribed.

(9) A copy of the transcript shall be provided to each party as soon as is reasonably practicable and, in any event, within ninety days of committal.

(10) All original depositions and tapes shall be sent to the Circuit Court upon committal.

(11) This process will be followed for each witness who gives oral evidence (*mutatis mutandis* if the witness is called by the defence).

(12) For any statement which is being admitted into evidence without oral evidence being given, the procedure at rule 25(1)(b) or (c) shall be followed.

(13) Where the examining Justice acts in accordance with paragraph (12), he shall confirm in open court that each statement complies with the formalities required by section 6 of the Act.

(14) Each witness statement, document or exhibit tendered in accordance with section 6 of the Act shall be signed by the examining Justice presiding over the committal proceedings.



(15) If the statement is not admissible by reason of its failure to satisfy the formalities of the Act, the examining Justice will decline to admit the statement.

(16) Where it has been confirmed that all formalities have been properly observed and the statement has been read, the examining Justice will state, in open court, that this statement is admitted into evidence.

(17) The examining Justice shall also direct that, if the accused person is committed, the witness shall be required to attend the trial in the Circuit Court at such time as the Court shall direct, unless notified to the contrary.

(18) At the end of the prosecution evidence, the examining Justice, of his own motion, may require the prosecution to show why there is a case to answer and the accused person will be entitled to submit that there is no case for him to answer.

(19) Following submissions, from both parties the examining Justice shall decide whether there is a *prima facie* case.

(20) If, in his judgment, there is no *prima facie* case, he shall—

- (a) announce so in open court, giving brief reasons for his decision; and
- (b) discharge the accused person.

(21) If the examining Justice finds there is a *prima facie* case, he will ask the accused person or his Attorney-at-Law which of the options under section 5(1) of the Act he wishes to exercise.

(22) If the accused person is not represented by an attorney-at-law, the examining justice shall—

- (a) explain each option to the accused person and the effect of section 5(3) of the Act; and
- (b) consider any application to adduce defence evidence pursuant to section 4 of the Act and, if granted, permit that person to give evidence.

(23) A statement may be adduced on behalf of the defence, in the usual way, if all formalities are satisfied and the prosecution does not wish to apply for the witness to be present in court for cross-examination.

(24) If the defence has adduced evidence, at the close of all the evidence the examining Justice will invite the parties to make any further submission as to whether there is a *prima facie* case.

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(25) If the accused person does not adduce any evidence, the examining Justice shall proceed to paragraph 28.

(26) If the examining Justice finds that a *prima facie* case has been made out on any charge, he shall commit the accused person for trial on those charges and issue the standard directions for cases committed to the Circuit Court set out in Annex A.

(27) The examining justice may commit on the charges of the information and/or on any other charge in respect of which a prima case is made out.

(28) The Court shall issue a Certificate of Committal to the Circuit Court in the form set out in Annex B which shall be signed by the examining Justice.

(29) The Certificate of Committal to the Circuit Court shall contain the following information—

- (a) the date of the proceedings;
- (b) the name of the committing Court and the examining Justice;
- (c) the name of the accused person;
- (d) the date of birth of the accused person;
- (e) the address of the accused person;
- (f) that witnesses (who are named) gave oral evidence and whether they signed a written deposition of their evidence or whether there is a recording, a transcript of which will be made available to the parties and the Circuit Court within twenty-one days (or such other time limit as the examining Justice shall indicate) of the committal proceeding;
- (g) the charges upon which the accused person was committed;
- (h) the venue of the Circuit Court to which the accused person was committed;
- (i) any date set for first hearing in the Circuit Court;
- (j) confirmation that standard directions were served on each party;
- (k) whether the accused person was remanded on bail or in custody; and
- (l) the name of the individual assigned or designated to take charge of the exhibits, in accordance with section 10(2) of the Act.

Chief Justice  
may issue  
standard  
directions.

27.—(1) The Chief Justice may issue directions, including the directions set out in paragraph (2), hereinafter called “standard directions”, to enable cases to progress smoothly and swiftly to the Circuit Court, without unnecessary delay in accordance with the overriding objective.

(2) The standard directions shall be in the form set out in Annex A and include the following requirements—

- (a) the prosecution shall serve a trial indictment and paginated trial bundle of statements and exhibits upon the accused person and the court within forty-two days of committal;
- (b) all disclosable material in the possession of the prosecution, other than material set out in paragraph (a) shall be served on the accused person (and the court, if relevant) within sixty days of committal;
- (c) any proposed editing of the question and answer records by the defence shall be served upon the prosecution within thirty days of receipt of the record; and
- (d) unless the defence request an expedited hearing in the Circuit Court in which case an earlier date shall be set by the examining Justice, the first appearance at the higher court will take place on a date not more than ninety days after committal, in the case of custody cases and one hundred and twenty days in the bail cases, where practicable, the date will be given at the time of committal.

(3) Standard directions shall be served on each party at the conclusion of committal proceedings where committal has taken place.

(4) Any standard directions shall cease to have effect once the case is heard, for the first time, in the higher court.

Jurisdiction.

28.—(1) Once committal has taken place, including the giving of directions which shall take place immediately after committal, the examining Justice shall cease to have jurisdiction over the case, except where there is later substitution of lesser charges in the Circuit Court and the case is remitted to the examining Justice.

(2) Nothing in these Rules shall affect the jurisdiction of the examining Justice in relation to bail during the period between committal and first appearance in the higher court.

Duty of  
examining  
Justice to  
explain rules  
to accused  
person.

29. Where an accused person is not represented by an Attorney-at-Law, the examining Justice shall explain the effect of these Rules to the accused person and afford the person reasonable time to make decisions or comply with these Rules.

Revocation.

30. The Committal Proceedings Rules, 2016, are revoked.

## ANNEX A

(Rules 25(15) and 27(2))

*Standard Directions*

NAME OF ACCUSED

COMMITTED TO

The directions listed below are given under the Committal Proceedings Rules, 2016, by the Chief Justice:

1. The prosecution shall serve a trial indictment and paginated trial bundle of statements and exhibits upon the accused person and the court within forty-two days of committal.
2. All disclosable material in the hands of the prosecution, other than material set out in paragraph 1 shall be served upon the accused person (and the court, if relevant) within sixty days of committal.
3. Any proposed editing of question and answer records by the defence shall be served upon the prosecution within thirty days of receipt of the record.
4. The accused person requested or did not request an expedited hearing in the court to which he or she has been committed.
5. The provisional date for the first hearing in the circuit court is

*(This may be altered by the listing officer of the circuit court)*

THESE STANDARD DIRECTIONS SHALL CEASE TO HAVE EFFECT ONCE THE ACCUSED HAS APPEARED BEFORE THE CIRCUIT COURT FOR THE FIRST TIME

ANNEX B

(Rule 24)

*Certificate of Committal*

NAME OF COURT

BEFORE (NAME OF EXAMINING JUSTICE)

NAME OF ACCUSED

ADDRESS

DATE OF BIRTH

WAS TODAY COMMITTED, ON BAIL/IN CUSTODY \*TO STAND TRIAL AT  
(NAME OF CIRCUIT COURT VENUE)

ON THE FOLLOWING CHARGES (LIST BELOW/SEE ANNEX ATTACHED\*)

NO WITNESSES/THE FOLLOWING WITNESSES\* GAVE ORAL EVIDENCE

STANDARD DIRECTIONS WERE SERVED UPON THE PARTIES

THE EXHIBITS WERE ENTRUSTED TO (NAME OF OFFICER).

SIGNED (EXAMINING JUSTICE)

DATE OF COMMITTAL PROCEEDINGS

NB: \* =Delete as appropriate

Dated this 14th day of November, 2016.

STEPHANE JACKSON-HAISLEY (MRS.)  
Senior Judge of the Parish Court (Acting),  
Chairman, Rules Committee

SIMONE WOLFE-REECE (MRS.)  
Senior Judge of the Parish Court (Acting),  
Member, Rules Committee

DALE STAPLE (MR.)  
Judge of the Parish Court,  
Member, Rules Committee

JACQUELINE CUMMINGS (MS.)  
Attorney-at-Law,  
Member, Rules Committee

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ALTHEA MCBEAN (MS.)  
Attorney-at-Law,  
Member, Rules Committee

Rules Committee of the Parish Court

Approved: DELROY CHUCK  
Minister of Justice

With special thanks to the Honourable Mr. Justice C. Dennis Morrison (President of the Court of Appeal), the Honourable Mrs. Justice Vivene Harris (past Chairman, Rules Committee of the Parish Courts) and the Honourable Mrs. Justice Cresencia Brown-Beckford (past Member, Rules Committee of the Parish Courts).



**PARISH COURTS OF JAMAICA**  
**PRACTICE DIRECTION (CRIMINAL)**

COMMITTAL PROCEEDINGS

This Practice Direction is issued by the Honourable Chief Justice in relation to the procedure for the management of Criminal cases under the Committal Proceedings Act (the Act). It is issued with the concurrence of the Director of Public Prosecutions (DPP).

These Directions are meant to ensure a consistent approach to the implementation of Committal Proceedings.

The under-mentioned directions are applicable to committal proceedings to the Circuit Courts:

1. Cases committed for mention on the opening of Circuit Courts must be submitted to the ODPP no later than two weeks prior to the opening of Circuit.
2. On committal, cases should be sent expeditiously to and should arrive at the ODPP no later than two weeks before the date on which a matter is set for hearing, to allow sufficient time for the Indictments to be prepared.
3. Cases must be committed on an on-going basis during the course of the Circuit Courts and should not be committed for the opening day of the Circuit only (See Section 10 of the Act).
4. A completed Preliminary Report **MUST** be placed on each Bundle in accordance with the Act.
5. A backing must be placed on each Bundle and must include the following details:
  - a) The name of the accused and any alias;
  - b) The charge;
  - c) The number of counts;
  - d) The name of the Investigating Officer and where he/she is stationed;
  - e) The status of the accused (Bail, bail offered or remanded, the sum in which bail is granted, and conditions if any);
  - f) The Attorney-at-law who represented the Accused at the committal hearing; and
  - g) The name of the Clerk of Court who dealt with the matter.
6. Each bundle must be properly collated, paginated, and adequately secured.
7. In accordance with the Act, BOTH the Judge's Bundle and the Prosecutor's Bundle along with any unused statements/materials should be sent to the ODPP.
8. The Act provides that a case may be committed when a *prima facie* case is made out. However, files must not be submitted without the inclusion of critical

material. Parish Court Judges must assess each case to determine the relevant documents which may include, but is not limited, to the following:

- a) The age of the Complainant (statement from mother in a case of Sexual Intercourse with a Person Under 16 Years);
- b) Forensic Certificates (where forensic reports reflects DNA existing, applications should be made for an "intimate sample"/DNA to be taken.);
- c) Medical Certificates;
- d) Post Mortem Report;
- e) Scene of Crime statements and Compact Disc.

The above measures are necessary in order to prevent numerous mention dates in the Circuit Courts.

#### CONTINUOUS CIRCUITS IN RURAL PARISHES

1. In rural continuous Circuits, cases should be committed on an on-going basis every two weeks during the course of the Circuit Court and should not be committed for the opening day of Circuit only. (See Section 10 of the Act).
2. On committal, matters should be sent expeditiously and should arrive at the Office of the Director of Public Prosecutions (ODPP) no later than two weeks before the date that the case is set for hearing to as to allow sufficient time for the Indictments to be prepared.

#### RURAL NON-CONTINUOUS CIRCUITS

In cases where matters are to be committed during the course of a non-continuous Circuit, Clerks of Courts should liaise with Crown Counsel regarding dates for such committals as well as submission of Bundles to the ODPP.

This Practice Direction becomes effective immediately.



Zaila McCalla, OJ  
Chief Justice  
January 11, 2017





No. SDCR 1 OF 2018

## STANDARD DIRECTION

(Under Committal Rules)

### STANDARD DIRECTIONS TO THE PARISH COURT FOR THE CORPORATE AREA (CRIMINAL DIVISION) PURSUANT TO RULE 27 (1) OF THE COMMITTAL PROCEEDINGS RULES 2015 MADE UNDER SECTION 135 OF THE JUDICATURE (PARISH COURT) ACT

#### EFFECTIVE AUGUST 1, 2018 UNTIL FURTHER NOTICE

The purpose of these directions is to streamline the practice relating to committal of cases from the Parish Court for the Corporate Area (Criminal Division) for trial in the Supreme Court.

The Supreme Court as at September 17, 2018 will assume responsibility for the listing and scheduling of all criminal cases committed for trial in the Supreme Court. This direction has become necessary to ensure the efficient preparation of committal bundles and the smooth transfer of cases from the Parish Court for the Corporate Area (Criminal Division) to the Supreme Court.

Where there is any conflict between these directions and Practice Direction 1 of 2017 on Committal Proceedings, issued January 11, 2017, these directions modify that Practice Direction, as it applies to the Parish Court for the Corporate Area (Criminal Division).

In keeping with these directions, all committals from the Parish Court for the Corporate Area (Criminal Division) are to be managed in the following manner as of **August 1, 2018**:

1. A case shall only be committed to the Supreme Court for trial, if, based on the evidence before the examining Justice, a prima facie case is established and the case file is substantially complete.
2. The original committal bundle shall be sent to the Office of the Director of Public Prosecutions, Public Building East, King Street, Kingston.
3. A complete and accurate copy of the original committal bundle, *(that contains copies of all the documents which comprise the original committal bundle)*, shall be sent to the Deputy Registrar of the Supreme Court, Criminal Registry, Supreme Court, Public Building East, King Street, Kingston.
4. The Deputy Registrar shall ensure the assignment of a unique number to that bundle. That number shall be transmitted to the Office of the Director of Public Prosecutions and will be the only number recognised by the Supreme Court as the number of that case, until its final disposal in the Supreme Court.
5. All cases that will be committed to the Supreme Court between August 1 — 31, 2018 should be committed for September 17, 2018.
6. From September 3, 2018, a case shall only be committed to the Supreme Court for the first or third Monday of each month, subject to the requirement that the original and copy committal bundles shall be sent to the Office of the Director of Public Prosecutions and the Deputy Registrar respectively, **at least fourteen days** before the Monday the case is scheduled to first come before the Supreme Court.



Bryan Sykes, OJ, CD

Chief Justice

July 16, 2018



No. SDCR 1 of 2019

## STANDARD DIRECTIONS

(Under the Committal Proceedings Rules)

**STANDARD DIRECTIONS TO THE PARISH COURT FOR THE CORPORATE AREA (CRIMINAL DIVISION) PURSUANT TO RULE 27(1) OF THE COMMITTAL PROCEEDINGS RULES 2016 MADE UNDER SECTION 135 OF THE JUDICATURE (PARISH COURT) ACT.**

### EFFECTIVE IMMEDIATELY

The purpose of these directions is to streamline the practice relating to the committal of cases from the Parish Court for the Corporate Area (Criminal Division) for trial in the Supreme Court.

These Standard Directions are issued arising from recommendations of the Criminal Case Management Committee and after consultation with the Parish Court Judges responsible for committing matters for trial in the Supreme Court.

In keeping with Standard Directions 1 of 2018 (*No. SDCR 1 of 2018*), all committals from the Parish Court for the Corporate Area (Criminal Division) are to be managed in the following manner effective immediately:

1. An aggregate of 12 cases shall be committed to the Home Circuit Court for the first or third Monday of each month. This is subject to the requirement that the original and copy committal bundles shall be sent to the Office of the Director of Public Prosecutions and the Deputy Registrar of the Supreme Court, Criminal Registry respectively, at least fourteen (14) days before the Monday the cases are scheduled to first come before the Supreme Court.

- 2. All documents and other relevant materials including potential exhibits which have been submitted to the Parish Court for the Corporate Area (Criminal Division) are to be placed on the case file.**
  
- 3. Where the potential exhibits consist of documents, they are to be copied. The original documents and the original file are to be sent to the Office of the Director of Public Prosecutions while the copy of the exhibits and the copy file are to be sent to the Deputy Registrar of the Supreme Court (Criminal Division).**
  
- 4. In accordance with paragraph one (1) of SDCR 1 of 2018, a ‘substantially complete’ case file shall mean:**
  - a. that all documents and other relevant material which are required to establish a prima facie case; and**
  - b. all material critical to the trial of the matter in the Supreme Court.**

**are submitted on the case file.**

**Bryan Sykes, OJ, CD  
Chief Justice**

# FORMS

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BUNDLE

RULE 17. COMMITTAL PROCEEDINGS RULES, 2016

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IN THE PARISH COURT SITTING AT:

IN THE MATTER of REGINA v.

INFORMATION NO. # :

FOR THE OFFENCE(S) OF:

---

COMMITTAL BUNDLE

---

R

-v-

DEFENCE COUNSEL	PROSECUTION COUNSEL	INVESTIGATING OFFICER

SERVED ON

NAME:

SIGNATURE:

DATE:







R

-v-

---

## List of Exhibits

Number	Description of exhibit	Exhibit label	Status of Exhibit	Page in Bundle



## **Matters Committed to the Circuit Court**

*Regina vs:* \_\_\_\_\_

*Offence(s):* \_\_\_\_\_

*Presiding Judge:* \_\_\_\_\_

*Prosecutor:* \_\_\_\_\_

*Defence Attorney:* \_\_\_\_\_

*Investigating Officer:* \_\_\_\_\_

*Date Committed:* \_\_\_\_\_

*Next Court Date:* \_\_\_\_\_

*Bail Status:* \_\_\_\_\_

### **REASONS FOR REFUSING BAIL (OR GRANTING CONDITIONAL BAIL)**

- Failure to surrender
- Risk of commission of further offences
- May interfere with witnesses or otherwise obstruct course of justice
- Serving prisoner
- Insufficient information to consider application
- Offence committed whilst on bail

R

-v-

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**Notices pursuant to section 6(5)(b) of the Committal Proceedings Act 2013**

Take notice that pursuant to section 6(5)(b) of the Committal Proceedings Act it has not been convenient to produce the below stated exhibits at court for the purpose of committal proceedings. Accordingly, the parties are served with notice as to the location of the exhibit.

<b>Number</b>	<b>Description of exhibit</b>	<b>Exhibit label</b>	<b>Location of exhibit</b>



**IN THE PARISH COURT SITTING AT**

**R**

**-v-**

.....

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**WITNESS ORDER PURSUANT TO SECTION 12 OF THE COMMITTAL  
PROCEEDINGS ACT 2013**

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**Pursuant to section 12 of the Committal Proceedings Act 2016, it is hereby  
ordered that:**

**Having given evidence in the committal proceedings for the case of R v  
.....you are required to attend to give evidence before  
the Circuit Court sitting at.....\***

- The order applies to:.....**
- Date of attendance:.....**

.....**Judge of the  
Parish Court**

.....**Date**

**\* Failure to comply with this order \* could constitute a contempt of court pursuant to s.12(3) of the Committal Proceedings Act (which carries a maximum penalty of 3 months imprisonment).**

***(Rules 25(15) and 27(2))***

***Standard Directions***

**NAME OF ACCUSED.....**

**COMMITTED TO.....**

The directions listed below are given under the Committal Proceedings Rules 2016, by the Chief Justice:

- 1. The Prosecution shall serve a trial indictment and paginated trial bundle of statements and exhibits upon the accused person and the court within forty-two days of committal.
- 2. All disclosable material in the hands of the prosecution, other than material set out in paragraph 1 shall be served upon the accused person (and the court, if relevant) within sixty days of committal.
- 3. Any proposed editing of question and answer records by the defence shall be served upon the prosecution within thirty days of receipt of the record.
- 4. The accused person requested or did not request an expedited hearing in the court to which he or she has been committed.
- 5. The provisional date for the first hearing in the circuit court is

---

*(This may be altered by the listing officer of the circuit court)*

**THESE STANDARD DIRECTIONS SHALL CEASE TO HAVE EFFECT ONCE THE ACCUSED HAS APPEARED BEFORE THE CIRCUIT COURT FOR THE FIRST TIME**

**Certificate of Committal**

**NAME OF COURT.....**

**BEFORE (NAME OF EXAMINING JUSTICE).....**

**NAME OF ACCUSED.....**

**ADDRESS.....**

**DATE OF BIRTH.....**

**WAS TODAY COMMITTED,  
TRIAL**

**\* TO STAND**

**ON THE FOLLOWING CHARGES**

**STANDARD DIRECTIONS WERE SERVED UPON THE PARTIES**

**THE EXHIBITS WERE ENTRUSTED TO**

**SIGNED (EXAMINING JUSTICE)**

**DATE OF COMMITTAL PROCEEDINGS\_\_\_\_\_**

**NB: \* = Delete as appropriate**

## SAMPLE COMPLETED PRELIMINARY REPORT FORM

PLEASE **TICK** RELEVANT OPTION Preliminary Report for Indictable Offences. Pursuant to Rule 4 of the Committal Proceedings Rules 2015 Case File Summary Report for Summary Offence

<b>NAME OF ACCUSED</b>	Tom Strokes o/c "Killa"	<b>DATE OF BIRTH</b>	11/11/1975
<b>ADDRESS OF ACCUSED</b>	12 Papaw Lane, John Pine Village, St. Andrew		
<b>CHARGES</b>	<ul style="list-style-type: none"> <li>• Murder</li> <li>• Illegal Possession of Firearm,</li> <li>• Illegal Possession of Ammunition,</li> <li>• Assault at Common Law</li> <li>• Robbery</li> </ul>	<b>Date of Offence</b>	5/1/2019
<b>SUMMARY OF EVIDENCE IN HAND</b>			
<b>ALLEGATIONS</b>			
<p>Allegations are that on Friday January 5, 2019 about 11pm along Braids Main Road, vicinity of John Pine Police Station in the parish of St. Andrew, Tom Strokes, shot and killed Mr. Tyrell Morgan 47 years old, Taxi Driver of 45 Pink Lane, Primary District, St. Andrew in the course of robbery. It is alleged that at the time of the incident, the (now deceased) was driving his white 2001 Toyota Corolla motorcar registered PP 1111 with four passengers aboard to include the accused. The accused, who was seated immediately behind the driver's seat brandished a firearm and demanded money from the occupants of the car. The three other passengers handed over their belongings comprising of cash, jewellery and cellular phones to him. However, Mr. Morgan hesitated in handing over money demand by the accused, who then used the firearm to hit the deceased in his head and in an angry voice, said to him "hey boy give me the money or tek one out a dis."</p> <p>The accused then instructed Mr. Morgan to turn the vehicle on a dirt track about 50 meters from where a coconut vendor operates and he refused. The accused then held the firearm to the back of Mr. Morgan's head whilst the car was still in motion and an explosion was heard. The accused immediately jumped from the vehicle and escaped into bushes nearby with property belonging to the other passengers.</p>			
<b>INVESTIGATION</b>			
<p>The police was called to the scene and on their arrival, Mr. Tyrell Morgan was seen with a wound to the back and front of his head with blood all over his upper body, steering wheel and driver's seat. He was taken to the Kingston Public Hospital by the Police where he died whilst undergoing treatment. Detective Sergeant Andrew Bill commenced investigation and caused the scene to be processed by a team of Forensic Crime Scene Investigators who recovered one spent casing from the car. The body was also processed at the hospital.</p> <p>The other three passengers who were present at the time of the incident gave statements corroborating each other. They also gave full description of the accused, as also the properties stolen from them.</p>			



## PRELIMINARY REPORT

**ARREST & SEIZURES**

The accused was arrested on January 9, 2019 about 5pm at Beverly Stokes' home (mother of the accused) located at 3 Ivy Road, Eldermire Circle St. Andrew by Corporal Geo Brady who executed a search warrant. A firearm, as also other items, to include three cellular phones, was found during the search of the residence. The cellular phones were later identified by the passengers, as being among the items stolen from them during the incident.

**IDENTIFICATION PROCEDURE**

An identification parade was held on January 10, 2019 at John Pine Police Station and all three witnesses pointed out the accused as the person who robbed them and shot and killed Mr Morgan. The firearm, and spent casing found at the scene were taken to the Government Forensic Science Laboratory for ballistic examination.

**POSTMORTEM EXAMINATION**

The Post mortem examination on the body of Mr. Tyrell Morgan was conducted on January 20, 2016 by Dr. KSN Prasad. The report, which is on file, stated that he died from a single gunshot wound which entered the back of his head and exited at his forehead.

<b>NUMBER OF WITNESSES</b>	9	<b>NUMBER OF EXHIBITS</b>	3
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**LOCATION OF EXHIBITS THAT CANNOT BE TAKEN TO COURT**

1	• John Pine Police Station, white 2001 Toyota Corolla sedan motor car register PP 1111
2	

<b>AGGRAVATING FACTORS</b>	<ul style="list-style-type: none"> <li>• Committed against person providing a service to the public</li> <li>• Use of firearm</li> <li>• Committed in furtherance of robbery/motivated by financial gain</li> <li>• Committed whilst on bail for separate offence (possession of offensive weapon 03.07.2018).</li> </ul>
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**DETAILS OF VULNERABLE WITNESS(ES) OR DEFENDANT – NOT INCLUDING WITNESS(ES) AT RISK**

Mary Jane, one of the passengers who was robbed during the incident is hearing impaired.

**OUTSTANDING WORK**

<b>TASK</b>	<b>ESTIMATED DATE FOR COMPLETION</b>
Statement of Corporal Geo Brady who arrested the accused, executed the search warrant and seized the items found at the premises to include a firearm	April 10, 2019
Statement of D/Sgt Z. Zeddy who conducted the ID parade	February 10, 2019
Statement of the Constable Jamm Barr who conducted the reference for the finger prints recovered in the car and that of the accused	February 10, 2019

PRELIMINARY REPORT

Statement of Constable R. Myers who escorted the Firearm that was seized at the premises to the Government Forensic Science Laboratory.	February 10, 2019
Statement from Beverly Stokes, mother of the accused	February 10,2019

**THIRD PARTY DISCLOSURE**

ITEMS REQUESTED	3 <sup>RD</sup> PARTY	DATE REQUESTED	EST. DATE DUE
<input checked="" type="checkbox"/> Forensic Certificate	Forensic Science and Legal Medicine Institute	10/1/2019	12/3/2019
<input checked="" type="checkbox"/> Ballistic Certificate	Forensic Science and Legal Medicine Institute	10/1/2019	20/3/2019
<input type="checkbox"/> Post Mortem Report	Forensic Science and Legal Medicine Institute		ON FILE
<input checked="" type="checkbox"/> Digital Forensics	CFCU	6/1/2019	6/4/2019
<input type="checkbox"/> Medical Certificate (Insert Name of Medical Institution / Medical Official) →			
<input type="checkbox"/> Statement (Insert Name of Party e.g. Indecom, PICA, FID, Tax Office) →			
<input checked="" type="checkbox"/> Criminal Records of Suspect/Accused	Criminal Records Office	13/1/2019	21/1/2019

<b>OTHER: PLEASE LIST BELOW</b>			

**ANY OTHER ISSUES IN THE CASE**


**ADDITIONAL INFORMATION (THIS SECTION SHOULD ONLY BE USED IF ALL THE PREVIOUS FIELDS ARE FILLED OUT)**


PRELIMINARY REPORT

REG. NO, RANK AND NAME OF INVESTIGATOR	<i>Det. Sgt Andrew Bill NO. 2345</i>		
INVESTIGATOR'S SIGNATURE	<i>ANDREW BILL</i>	DATE	JANUARY 12.19
SUPERVISOR'S SIGNATURE (CRIME OFFICER / DDI / VETTING OFFICER)	<i>JOAN STONE CRIME OFFICER</i>	DATE	JANUARY 12.19
APPROVING PROSECUTION NAME AND SIGNATURE		DATE APPROVED	

SAMPLE



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